



Guide to the Work Health and Safety Act 2011

Queensland

WHSQ

Workplace Health and Safety Queensland
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Introduction

This guide provides an overview of the Queensland *Work Health and Safety Act 2011* (WHS Act). It is designed to help people understand their health and safety duties and rights in the workplace. However, this guide is not intended to be read in place of the WHS Act. To assist readers, cross-references to specific sections of the WHS Act are provided after each heading.

This guide also provides information on:

- the requirements for consultation between business operators, worker representatives and workers
- the notification of incidents
- enforcement procedures
- what constitutes an offence under the WHS Act and the range of penalties that apply.

Nationally uniform laws

Nationally uniform laws ensure workers in Australia have the same standard of health and safety protection, regardless of the work they do or where they work.

Nationally uniform work health and safety laws means greater certainty for employers (particularly those operating across state borders) and, over time, reduced compliance costs for business.

More consultation between employers, workers, and their representatives, along with clearer responsibilities will make workplaces safer for everyone.

Object of the WHS Act (section 3)

The WHS Act provides a framework to protect the health, safety and welfare of all workers at work and of all other people who might be affected by the work.

The WHS Act aims to:

- protect the health and safety of workers and other people by eliminating or minimising workplace risks
- ensure effective representation, consultation and cooperation to address health and safety issues in the workplace
- encourage unions and employers to take a constructive role in improving health and safety practices
- promote information, education and training on health and safety
- provide effective compliance and enforcement measures
- deliver continuous improvement and progressively higher standards of health and safety.

Throughout the WHS Act, the meaning of health includes psychological health as well as physical health.

Who is covered by the WHS Act?

Most workers in Australia are protected by nationally uniform work health and safety laws. This includes employees, contractors, sub-contractors, outworkers, apprentices and trainees, work experience students, volunteers and employers who perform work.

The WHS Act also provides protection for the general public so that their health and safety is not placed at risk by work activities.

What the WHS Act does not apply to

The WHS Act does not apply to the following:

- coal mines (*Coal Mining Safety and Health Act 1999*)
- metalliferous mining (*Mining and Quarrying Safety and Health Act 1999*)
- operating plant under the *Petroleum and Gas (Production and Safety) Act 2004*
- where the *Electrical Safety Act 2002* applies

- where the *Safety in Recreational Water Activities Act 2011* applies
- where the *Rail Safety National Law (Queensland)* applies
- aviation safety.

In addition, the WHS Act operates simultaneously with, but does not limit the operation of the following legislation:

- *Explosives Act 1999*
- *Heavy Vehicle National Law (Queensland)*
- *Petroleum and Gas (Production and Safety) Act 2004*, in relation to construction work for a stage of operating plant, and the application of hazardous chemicals and major hazard facilities regulations to operating plant
- *Public Safety Preservation Act 1986*
- *Radiation Safety Act 1999*
- *Transport Operations (Marine Safety) Act 1994 (Qld)*
- *Occupational Health and Safety (Maritime Industry) Act 1993 (Cth)*, *Navigation Act 2012 (Cth)* and the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012 (Cth)*
- *Transport Operations (Road Use Management) Act 1995*.

WHS Regulation and codes of practice (sections 26A and 274-276)

People with duties under the WHS Act should also refer to the Work Health and Safety Regulation 2011 (WHS Regulation) and codes of practice.

WHS Regulation

The WHS Regulation specifies the way in which a duty under the WHS Act must be performed and prescribes procedural or administrative matters to support the WHS Act (e.g. requiring licences for specific activities and the keeping of records).

Codes of practice

Codes of practice provide practical guidance on how to meet the standards set out in the WHS Act and the WHS Regulation. Codes of practice can be used as evidence in legal proceedings to provide

information on how a hazard or risk can be controlled or managed and to determine what was reasonably practicable in the circumstances discussed. They can also be referred to by an inspector when issuing an improvement or prohibition notice.

From 1 July 2018, persons conducting a business or undertaking must either comply with an approved code of practice or manage hazards and risks arising from work in a way that is different to the code but provides a standard of health and safety that is equivalent to or higher than the standard required in the code.

Definitions (sections 4-8)

The following terms are used throughout this guide:

Health and safety committee (HSC) – a group including workers, HSRs and PCBUs (see definitions below) that facilitates cooperation between a PCBU and workers to provide a safe place of work.

Health and safety representative (HSR) – a worker who has been elected by a work group to represent them on health and safety issues.

Officer – an officer within the meaning of section 9 of the *Corporations Act 2001 (Cth)* other than a partner in a partnership. Broadly, an officer is a person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the organisation's activities. An elected member of a local government acting in that capacity is not an officer of the local government. Similarly, a minister of a state, territory or the Commonwealth is not an officer of a responsible agency of the state, territory or Commonwealth.

An officer can also be an officer of the Crown or a public authority if they are a person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business or undertaking of the Crown or public authority.

Person conducting a business or undertaking (PCBU) – a person conducting a business or undertaking alone or with others, whether or not for profit or gain. A PCBU can be a sole trader (for example a self-employed person), a partnership, company, unincorporated association or government department of public authority (including a local government). An elected member of a local government acting in that capacity is not a PCBU.

Note - A volunteer association working for one or more community purposes which does not employ a worker does not conduct a business or undertaking for the purpose of the WHS Act.

Note - A strata title body corporate that is responsible for any common areas used only for residential purposes and which does not employ a worker does not conduct a business or undertaking for the purpose of the WHS Act.

Person with management or control – a PCBU with management or control of the workplace.

Plant – any machinery, equipment, appliance, container, implement or tool.

Structure – anything that is constructed, whether fixed or moveable, temporary or permanent and includes buildings, masts, towers, framework, pipelines, transport infrastructure and underground works (shafts or tunnels).

Substance – any natural or artificial substance in the form of a solid, liquid, gas or vapour.

Supply – supply and re-supply of a thing provided by way of sale, exchange, lease, hire or hire purchase arrangement.

Volunteer – a person who acts on a voluntary basis regardless of whether they receive out of pocket expenses.

Worker – employees, contractors, subcontractors, outworkers, apprentices and trainees, work experience students, volunteers and PCBUs who are individuals if they perform work for the business or undertaking.

Work group – a group of workers who share similar work conditions (e.g. all the electricians in a factory; all people on night shift; all people who work in the loading bay of a retail storage facility).

Workplace – any place where work is carried out for a business or undertaking. This may include offices, factories, shops, construction sites, vehicles, ships, aircraft or other mobile structures on land or water such as offshore units and platforms.

Reasonably practicable (section 18)

The guiding principle of the WHS Act is that all people are given the highest level of health and safety protection from hazards arising from work, so far as is reasonably practicable.

The term ‘reasonably practicable’ means what could reasonably be done at a particular time to ensure health and safety measures were in place.

In determining what is reasonably practicable, there is a requirement to weigh up all relevant matters including:

- the likelihood of a hazard or risk occurring (i.e. the probability of a person being exposed to harm)
- the degree of harm that might result if the hazard or risk occurred (i.e. the potential seriousness of injury or harm)
- what the person concerned knows, or ought to reasonably know, about the hazard or risk and ways of eliminating or minimising it
- the availability of suitable ways to eliminate or minimise the hazard or risk
- the cost of eliminating or minimising the hazard or risk.

Ordinarily, cost will not be the key factor in determining what it is reasonable for a duty holder to do unless it can be shown to be 'grossly disproportionate' to the risk. If the risk is particularly severe, a PCBU will need to demonstrate that costly safety measures are not reasonably practicable due to their expense and that other less costly measures could also effectively minimise the risk.

Work health and safety duties

General principles (sections 13-17)

The WHS Act outlines the general health and safety duties of PCBUs, officers of companies, unincorporated associations, government departments and public authorities (including local governments), workers and other people at a workplace.

General duties for PCBUs require the duty holder to ensure health and safety, so far as is reasonably practicable, by eliminating risks to health and safety. If this is not possible, risks must be minimised so far as is reasonably practicable.

Shared duties (sections 15-16)

A person may have more than one duty. For example, the working director of a company has duties as an officer of the company and also as a worker.

More than one person may have the same duty. For example, each director on the Board of Directors of a company will owe a duty. In such cases, all directors are each fully responsible for that duty.

Duties of a PCBU

Primary duty of care (section 19)

The WHS Act requires all PCBUs to ensure the health and safety of workers, so far as is reasonably practicable. Workers include volunteers, contractors and contractors' workers.

PCBUs also have a duty of care to any other people who may be put at risk from work carried out by the business or undertaking.

A self-employed person must ensure his or her own health and safety while at work, so far as is reasonably practicable.

General duties (sections 19-26)

The WHS Act sets out specific duties which a PCBU must comply with as part of their general duty so far as is reasonably practicable. These include:

- providing and maintaining a work environment that is safe and without risks to health, including the entering and exiting of the workplace
- providing and maintaining plant, structure and systems of work that are safe and do not pose health risks (e.g. providing effective guards on machines and regulating the pace and frequency of work)
- ensuring the safe use, handling, storage and transport of plant, structure and substances (e.g. toxic chemicals, dusts and fibres)
- providing adequate facilities for the welfare of workers at workplaces under their management and control (e.g. washrooms, lockers and dining areas)
- providing workers with information, instruction, training or supervision needed for them to work safely and without risks to their health
- monitoring the health of their workers and the conditions of the workplace under their management and control to prevent injury or illness
- maintaining any accommodation owned or under their management and control to ensure the health and safety of workers occupying the premises.

In addition, a PCBU with management or control of a workplace must ensure, so far as is reasonably practicable, that the workplace, the means of entering and exiting the workplace and anything arising from the workplace do not affect the health and safety of any person.

Similarly, a PCBU with management or control of fixtures, fittings or plant at a workplace must ensure, so far as is reasonably practicable, that the fixtures, fittings and plant do not affect the health and safety of any person.

A PCBU who installs, constructs or commissions plant or structures must also ensure all workplace activity relating to the plant or structure including its decommissioning or dismantling is without risks to health or safety.

Duty to consult (sections 46-49)

A PCBU has a duty to consult with workers and HSRs about matters that directly affect them. This extends to consulting with contractors and their workers, employees of labour hire companies, students on work experience, apprentices and trainees, as well as with the PCBU's own employees and volunteer workers.

There may be a number of different duty holders involved in work (e.g. suppliers, contractors and building owners). If more than one person in the workplace has a health and safety duty, they must consult all other people with the same duty. Each duty holder must share information in a timely manner and cooperate to meet health and safety obligations.

Duty of officers (section 27)

It is the duty of an officer of a PCBU to exercise due diligence to ensure the PCBU complies with its health and safety duties and obligations. An officer may be charged with an offence under the WHS Act independently of any breach of duty by the PCBU.

Due diligence includes personally taking reasonable steps to:

- acquire and keep current information on work health and safety matters
- understand the nature and operations of the business or undertaking and associated hazards and risks
- ensure the PCBU has, and uses, appropriate resources and processes to eliminate or minimise risks to health and safety
- ensure the PCBU has appropriate processes to receive and consider information about incidents, hazards and risks, and to respond in a timely manner
- ensure the PCBU has, and implements, processes for complying

with their duties and obligations (e.g. reports notifiable incidents, consults with workers, complies with notices, provides training and instruction and ensures HSRs receive training entitlements).

Duty of workers (section 28)

While at work, workers are required to take reasonable care for their own health and safety and that of others who may be affected by their actions or omissions. They must also cooperate with any reasonable instruction given by the PCBU and any reasonable policy or procedure of the PCBU to comply with the WHS Act and WHS Regulation.

Duties of other persons at the workplace (section 29)

Any person at a workplace, including customers and visitors, must take reasonable care of their own health and safety and that of others who may be affected by their actions or omissions. They must also cooperate with any actions taken by the PCBU to comply with the WHS Act and WHS Regulation.

Further duties of upstream PCBUs (designers, manufacturers, importers and suppliers)

Designers, manufacturers, importers and suppliers of plant, structures or substances can influence the safety of these products before they are used in the workplace. These people have a responsibility, so far as is reasonably practicable, to ensure these products are without risks to the health and safety of people who are at or near the workplace.

Duty holder	Duty to ensure health and safety in the workplace	Duty to test	Duty to provide information
<p>Designers of plant, structures or substances (section 22)</p>	<p>A PCBU who is a designer of a plant, structure or substance that is to be used, or could reasonably be expected to be used, at a workplace must ensure all workplace activity relating to the plant, structure or substance, including its handling or construction, storage, dismantling and disposal is designed to be without risks to health or safety.</p>	<p>A designer of the plant, structure or substance must carry out tests and examinations sufficient to ensure that when used for its intended purpose it is safe and without risks to health or safety.</p>	<p>Information must be made available to those for whom the plant, structure or substance was designed about its intended purpose, test results and any conditions necessary to ensure that it is safe and without risks to health or safety, when used for its intended purpose.</p>

Duty holder	Duty to ensure health and safety in the workplace	Duty to test	Duty to provide information
<p>Manufacturers of plant, structures or substances (section 23)</p>	<p>A PCBU who is a manufacturer of any plant, structure or substance which is manufactured to be used, or could reasonably be expected to be used, at a workplace must ensure all workplace activity relating to the plant, structure or substance, including its handling, storage and disposal or dismantling is without risks to health or safety when used for its intended purpose.</p>	<p>Manufacturers must carry out or arrange tests and examinations sufficient to ensure that the plant, structure or substance is manufactured to be safe and without risks to health or safety when used for a purpose for which it was manufactured.</p>	<p>Information must be given to any person who will use the plant, structure or substance about the purpose for which it was manufactured, test results and any conditions necessary to ensure that when used for its intended purpose it is safe and without risks to health or safety.</p>

Duty holder	Duty to ensure health and safety in the workplace	Duty to test	Duty to provide information
<p>Importers of plant, substances or structures (section 24)</p>	<p>A PCBU who is an importer of any plant, substance or structure which is to be used, or could reasonably be expected to be used, at a workplace must ensure all workplace activity relating to the plant, structure or substance, including its handling, storage and disposal or dismantling is without risks to health or safety when used for its intended purpose.</p>	<p>Importers must carry out or arrange tests and examinations sufficient to ensure that the imported plant, structure or substance is safe and without risks to health or safety when used for its intended purpose.</p> <p>Alternatively importers must ensure that these tests and examinations have been carried out.</p>	<p>Information must be given to any person who will use the plant, structure or substance about the purpose for which it was imported, test results and any conditions necessary to ensure that when used for its intended purpose it is safe and without risks to health or safety.</p>

Duty holder	Duty to ensure health and safety in the workplace	Duty to test	Duty to provide information
Duties of suppliers of plant, substances or structures (section 25)	A PCBU who is a supplier of any plant, substance or structure that is to be used, or could reasonably be expected to be used, at a workplace must ensure all workplace activity relating to the plant, structure or substance, including its handling, storage and disposal or dismantling is without risks to health or safety when used for its intended purpose.	Suppliers must carry out or arrange tests and examinations sufficient to ensure that the supplied plant, structure or substance is safe and without risks to health or safety when used for its intended purpose. Alternatively suppliers must ensure that these tests and examinations have been carried out.	Information must be given to any person who will use the plant, structure or substance about the purpose for which it was supplied, test results and any conditions necessary to ensure that when used for its intended purpose it is safe and without risks to health or safety.

Incident notification (sections 35-39)

A PCBU must notify Workplace Health and Safety Queensland as soon as they become aware of a death, or a serious injury or illness that results in:

- immediate hospital treatment as an in-patient
- immediate medical treatment for serious injuries (e.g. amputation, scalping, a spinal injury, loss of a bodily function or a serious laceration, burn, head or eye injury), or
- medical treatment within 48 hours of exposure to a substance.

A serious illness (regulation 699) is:

- any infection to which the carrying out of work is a significant contributing factor, including any infection that is reliably attributable to carrying out work:
 - (i) with micro-organisms
 - (ii) that involves providing treatment to a person
 - (iii) that involves contact with human blood or body substances, or
 - (iv) involves handling or contact with animals, animal hides, skins, wool or hair, animal carcasses or animal waste products.
- the following occupational zoonoses contracted in the course of work involving handling or contact with animals, animal hides, skins, wool or hair, animal carcasses or animal waste products:
 - (i) Q fever
 - (ii) Anthrax
 - (iii) Leptospirosis
 - (iv) Brucellosis
 - (v) Hendra Virus
 - (vi) Avian Influenza
 - (vii) Psittacosis.

A PCBU must also notify Workplace Health and Safety Queensland immediately after becoming aware of any dangerous incident at a workplace that exposes a person to a serious health or safety risk from immediate or imminent exposure to:

- the uncontrolled escape, spillage or leakage of a substance
- an uncontrolled implosion, explosion or fire
- an uncontrolled escape of gas, steam or a pressurised substance
- an electric shock

- the fall or release from height of any plant, substance or thing
- the collapse, overturning, failure or malfunction of, or damage to, plant that is required to be licensed or registered
- the collapse or partial collapse of a structure, including an excavation or of any shoring supporting an excavation
- the inrush of water, mud or gas into an underground excavation or tunnel
- the interruption of the main system of ventilation in an underground excavation or tunnel
- other incidents as stated in the WHS Regulation.

Notice of an incident must be given by the fastest possible means. If notice is given by telephone, Workplace Health and Safety Queensland may request a written notice of the incident. This must be provided within 48 hours of the request and the PCBU must keep a copy of this record for at least five years.

The person with management or control of a workplace at which a notifiable incident has occurred must ensure the site of the incident is not disturbed until an inspector arrives at the site or directs otherwise. This does not prevent any action required to protect a person's health or safety, help someone who is injured or make the site safe.

Other notifications

In addition to the notification of incidents, PCBUs are required to notify Workplace Health and Safety Queensland of the following matters:

- licensed asbestos removal work (licensed asbestos removalist)
- asbestos fibre levels greater than 0.02 f/ml (licensed asbestos removalist – for Class A removal work)
- asbestos emergency work - domestic premises (PCBU who is to carry out demolition work – for demolition work)
- asbestos emergency work - non-domestic premises (PCBU with management or control of the workplace – for demolition work)

- lead risk work commencing
- changes to information regarding lead risk work
- worker who is removed from carrying out lead risk work
- health monitoring reports
- abandoned tanks
- pipelines
- demolition work
- Schedule 11 hazardous chemicals exceeding manifest quantities at a workplace
- Schedule 15 hazardous chemicals exceeding 10 per cent of their threshold quantity.

Consultation with workers and representation of workers

Consultation, cooperation and coordination (sections 46-49)

Consultation is a collaborative process between the PCBU and any workers undertaking work within or for the business or undertaking. It involves sharing information about health and safety. PCBUs must give workers who are, or are likely to be, directly affected by a matter relating to health and safety, a reasonable opportunity to express their views or raise issues. If a HSR is representing workers, the consultation must involve them.

A PCBU must consult with workers when:

- identifying hazards and assessing risks arising from work
- proposing changes that may affect the health and safety of workers
- carrying out activities prescribed by the WHS Regulation.

A PCBU must also consult with workers and take their views into account when making decisions about:

- ways to eliminate or minimise risks
- the adequacy of facilities for workers' welfare
- procedures for consulting workers
- resolving health and safety issues
- monitoring the health and safety of workers or workplace conditions
- how to provide health and safety information and training to workers.

Workers are entitled to:

- elect a health and safety representative (HSR)
- request the formation of a health and safety committee
- cease unsafe work

- have health and safety issues resolved in accordance with an agreed issue resolution procedure
- not be discriminated against for raising health and safety issues.

Health and safety representatives

A HSR represents the health and safety interests of a work group. There can be as many HSRs and deputy HSRs as needed after consultation, negotiation and agreement between workers and their employers.

A PCBU must keep a current list of all HSRs and deputy HSRs, display a copy at the workplace and provide a copy, as prepared or updated, to Workplace Health and Safety Queensland.

Work groups (sections 50-57)

Any worker or group of workers can ask the PCBU for whom they are carrying out work to set up a work group at one or more workplaces for the purpose of electing a HSR.

A work group is a group of workers who share a similar work situation. For example, a work group might consist of all workers in the office part of a manufacturing complex, or it might consist of people of the

same trade, or it might consist of all people on the night shift. If agreed, workers from multiple businesses can be part of the same work group which might include contractors, labour hire staff, outworkers and apprentices.

If a request is made for the election of a HSR, a PCBU must start negotiations with workers within 14 days. Negotiations between a PCBU and workers will determine the:

- number and composition of the work group(s)
- number of HSRs and deputy HSRs
- workplace(s) to which the work group(s) apply.

A PCBU must negotiate a work group with a worker's representative (e.g. union) if asked by a worker. The PCBU must also notify workers as soon as practicable of the outcome of the negotiations.

At any time, the parties to a work group agreement may negotiate a variation.

If negotiations fail in establishing a work group, or discussing a variation to a work group agreement, any person who is a party to the negotiations can request an inspector to assist in deciding the matter (or, if the matter involves multiple businesses, to assist the negotiations).

Powers and functions (sections 68-69)

The role of a HSR is generally limited to their work group unless there is a serious risk to the health or safety of other workers from an immediate hazard or a worker in another work group asks for their assistance, and the HSR for that other work group is found to be unavailable.

A HSR can:

- inspect the workplace or any area where work is carried out by a worker in the work group
- accompany a workplace health and safety inspector during an inspection of the area the HSR represents
- be present at an interview with a worker that the HSR represents (with their consent) and the PCBU or an inspector about health and safety issues
- request a health and safety committee be established
- monitor compliance measures by the PCBU
- represent the work group in health and safety matters
- investigate complaints from members of the work group
- inquire into any risk to the health or safety of workers in the work group
- direct a worker to cease unsafe work.

A HSR is not personally liable for anything done, or not done, in good faith while carrying out their role.

Election and eligibility (sections 50, 60-67)

The members of a work group elect their own HSR. All members are able to vote in an election. To be eligible for election, a person must be a member of the work group and not be disqualified from acting as a HSR.

Upon a request for the election of a HSR, a PCBU must provide resources and assistance to carry out the election. Members of a work group decide how to elect a HSR. Elections for a deputy HSR are carried out in the same way.

The term of office for a HSR or deputy HSR is three years. They cease to hold office if:

- they leave the work group
- they are disqualified from being a HSR
- they resign as a HSR
- the majority of members of the group agree the person should no longer represent them.

HSRs can be re-elected. Elections are not needed when the number of candidates is the same as the number of vacancies.

Any person adversely affected by a decision or action of a HSR can apply to the Queensland Industrial Relations Commission (QIRC) to have them disqualified.

Training (section 72)

A HSR must complete an initial five day training course approved by Workplace Health and Safety Queensland within three months of their election, or as soon as practicable if the initial five day course is not reasonably available. If a worker chooses not to undertake the training within the time period, they will no longer be eligible to fulfil the role of HSR and will need to be replaced. A one day refresher training course is required at least every three years.

The PCBU must give HSRs paid time off to attend a course and pay the course costs and reasonable expenses.

The PCBU has a duty to ensure the relevant training has been provided to the HSR so that they can perform their functions and exercise their powers under the WHS Act. Before the HSR can issue a provisional improvement notice (PIN) or give a direction to cease unsafe work, they must attend an approved training course.

A PCBU must give HSRs the resources, facilities and assistance to enable them to carry out their functions.

Provisional improvement notices (sections 90-102)

If a HSR reasonably believes that a person is contravening or has contravened the WHS Act in circumstances that make it likely that the contravention will continue or be repeated, they must consult with the person before issuing a provisional improvement notice (PIN).

A PIN must be in writing and include:

- that the HSR believes the WHS Act is being contravened or has been contravened in circumstances that make it likely that the contravention will continue or be repeated
- the section of the WHS Act considered to have been contravened and how the section is being or has been contravened
- the date (at least eight days from the issue date) by which the contravention must be remedied.

A PIN can include directions on how to remedy a contravention. These directions may refer to a code of practice and offer the person a choice of solutions.

If a PCBU receives a PIN they must display it in a prominent place in the workplace, or part of the workplace, at which work is being carried out that is affected by the notice.

Within seven days of being issued with a PIN, any person (or the PCBU if the person issued with the PIN is a worker), can ask Workplace Health and Safety Queensland to review the notice. An inspector will attend the workplace to confirm the notice, confirm it with changes or cancel it. A confirmed PIN must be complied with.

The inspector will give a copy of their decision to the person who applied for the review and the HSR who issued the notice.

A PCBU issued with a PIN must give Workplace Health and Safety Queensland a copy of the notice as soon as possible.

Health and safety committees (sections 75-79)

A health and safety committee (HSC) facilitates cooperation between a PCBU and workers in developing and carrying out measures to ensure health and safety at work. This includes health and safety standards, rules and procedures for the workplace.

A PCBU must set up a HSC within two months of being requested to do so by a HSR, or by five or more workers in a workplace or when required by the WHS Regulation.

A PCBU can also establish a HSC on their own initiative.

At least half of the members of a HSC must be workers that have not been nominated by the PCBU. A HSR can also consent to be a member of the committee and, when a workplace has more than one HSR, they can choose one or more to be members. If there is a Workplace Health and Safety Officer (WHSO) for the workplace, the WHSO must be a member of the committee.

When agreement cannot be reached on the composition of an HSC, any party to the committee can request an inspector's assistance to decide the matter.

An HSC must meet at least once every three months and at any reasonable time at the request of at least half of the members of the committee or if the WHSO requests a committee meeting.

Work health and safety officers (sections 103A-103I)

A PCBU may appoint a Work Health and Safety Officer (WHSO) if the person holds a certificate of authority for appointment as a WHSO. A WHSO has specific functions to advise the PCBU on work health and safety matters.

A WHSO must, at least every 12 months, assess the risks to health and

safety arising from work carried out by the business or undertaking and prepare a report identifying any risks and recommending measures to control those risks. A copy of the report must go to the PCBU and to the HSC if one exists.

The PCBU has certain obligations to provide information, resources and support to the WHSO including allowing inspections and implementing any recommendations from the assessment report.

A WHSO is not personally liable for anything done or omitted to be done in good faith when performing the functions under the WHS Act.

Right to cease unsafe work (sections 83-89)

If a worker has a reasonable concern about a serious risk to their health or safety from immediate or imminent exposure to a hazard, they may cease or refuse to carry out work.

A worker who ceases work must notify the PCBU as soon as possible. Workers can be redirected to suitable alternative work at their workplace or at another site until they can resume normal duties.

If a HSR has a reasonable concern that the health and safety of a worker who is in a work group represented by the HSR is at serious risk, the HSR can give a direction to the worker to cease work. The risk must emanate from an immediate or imminent exposure to a hazard.

The HSR must, before giving such a direction, consult the PCBU and attempt to resolve the matter using the issue resolution process under section 81 of the WHS Act. However, if the risk is serious or imminent that it would not be reasonable to consult before giving a direction, the HSR can give a direction without consulting first. A HSR must also inform the PCBU of any directions given by them to workers.

HSRs cannot give directions to cease unsafe work unless they have completed HSR training.

A PCBU, worker or HSR may request an inspector to attend the workplace and assist in resolving an issue with the cessation of work.

Issue resolution (sections 80-82)

If there is a health and safety issue at a workplace, the relevant parties must make reasonable efforts to achieve a timely, final and effective resolution of the issue in accordance with an agreed procedure or the default procedure set out in the WHS Regulation.

Relevant parties are:

- the PCBU or their representative
- each PCBU or their representative, if the issue involves more than one PCBU
- the HSR for that work group or his/her representative, if the worker(s) affected by the issue is/are in a work group
- the worker(s) or his/her representative, if the worker(s) affected by the issue is/are not in a work group.

A person's representative may enter the workplace for the purpose of attending discussions with a view to resolving the issue.

If an issue remains unresolved, one of the parties may ask Workplace Health and Safety Queensland to appoint an inspector to attend the workplace and assist in resolving the issue.

Such a request does not prevent a worker from ceasing unsafe work or a HSR from issuing a PIN.

Although an inspector cannot determine the issue, the inspector may exercise any of his/her compliance powers under the WHS Act.

Work health and safety disputes (sections 102A-102G)

If a dispute about certain WHS matters remains unresolved for 24 hours, after the parties to the dispute have asked Workplace Health and Safety Queensland to appoint an inspector to assist in resolving the dispute, a party to the dispute can provide written notice to the industrial registrar for the dispute to be heard by the QIRC.

The QIRC can deal with the dispute in any way it thinks fit, including by means of mediation, conciliation or arbitration.

Discriminatory, coercive or misleading conduct

(sections 104-115)

A person must not dismiss, terminate a contract with, refuse to hire or detrimentally alter the position of a worker, or treat them less favourably, because they:

- are, were or propose to be a WHSO, HSR or member of an HSC or perform a function in this capacity
- exercised a power or performed a function (or refrained from doing so)
- assisted a person to exercise a power or perform a function
- raised a health and safety issue with a PCBU, inspector, entry permit holder, HSR, WHSO, member of an HSC or another worker
- are involved in resolving a work health and safety issue
- acted to get another person to comply with their duties.

A person is also engaging in discriminatory conduct if they terminate or refuse to enter a commercial arrangement with another person for these reasons.

It is unlawful to engage in, threaten or organise to take any of the above actions, or to ask or encourage another person to do this.

These provisions create both criminal and civil causes of action in the event of such conduct. In addition, they do not preclude actions

being taken under other relevant state and federal laws that deal with discrimination including the *Anti-Discrimination Act 1991* and the *Fair Work Act 2009 (Cth)*.

Entry permit holders (section 131-137, 149)

A WHS entry permit holder is a union official who has completed an approved training course and holds a valid and current entry permit under the Commonwealth *Fair Work Act 2009* or the Queensland *Industrial Relations Act 2016*. An entry permit allows the holder to investigate suspected contraventions of the WHS Act, meet with workers and exercise their legal rights under WHS Act. Permits are valid for three years from the date of issue or cease when the permit holder ceases to be a union official. A permit must be returned within 14 days of expiry.

WHS entry permit holders must show their identification upon request.

Suspected contraventions (sections 117-120, 144-146)

A WHS entry permit holder may enter a workplace during working hours to inquire into a contravention if they reasonably suspect one has or is occurring. While there, they may inspect any work or thing that directly relates to the matter, talk to any worker who is entitled to be represented by the union and warn anyone they believe is exposed to a serious health or safety risk.

They may consult with the PCBU about the matter and request to look at, and make copies of, relevant records or documents kept at the workplace in hard copy or on a computer. A PCBU must not, without reasonable excuse, refuse or fail to comply with this request, however they do not have to make records available if this breaches the *Privacy Act 1988* (Cth).

When inquiring into a suspected contravention, an entry permit holder can also inspect or make copies of employee records that are directly relevant to the contravention or other documents that are directly relevant that are not held by that PCBU. In this case at least 24 hours notice of the entry must be given to the person from whom the documents are requested, the relevant PCBU and the person with management and control of the workplace.

A person must not, without reasonable excuse, refuse or unduly delay a permit holder's entry to a workplace, or obstruct them from exercising their rights.

Consulting workers (sections 121-130)

An entry permit holder may enter a workplace to consult or provide advice to workers on health and safety matters. At least 24 hours' notice must be given to the PCBU and the person with management and control of the workplace before the entry.

Disputes (sections 141-143)

Any party to a dispute about a right of entry may ask Workplace Health and Safety Queensland to appoint a workplace health and safety inspector to attend the workplace to assist with resolving the matter. Where a dispute remains unresolved, any relevant party can make application to the QIRC to seek resolution of the dispute.

The QIRC may deal with a dispute on its own initiative or on the application of a WHS entry permit holder, the relevant union, Workplace Health and Safety Queensland, a PCBU or another person affected by the exercise of right of entry powers. The QIRC may deal with a dispute in any way it determines, including mediation, conciliation or arbitration.

Revoking a permit (sections 138-140)

An entry permit may be revoked by the QIRC if a holder breaches permit conditions or engages in improper behaviour. Workplace Health and Safety Queensland, a PCBU or anyone affected by the actions of a permit holder can apply in writing to have it revoked. The QIRC can make orders including imposing conditions on a permit or suspending or revoking a permit.

The regulator, inspectors and enforcement

Role of the regulator (sections 152-155)

Workplace Health and Safety Queensland (WHSQ) has a broad range of functions including to:

- monitor and enforce compliance with the WHS Act and WHS Regulation
- provide advice and information on work health and safety to duty holders, including PCBUs and workers, of their duties, obligations and rights under the WHS Act
- foster a cooperative, consultative relationship between duty holders and the people to whom they owe work health and safety duties, and their representatives
- promote and support work health and safety education and training
- engage in, promote and coordinate the sharing of information to achieve the object of the WHS Act, including the sharing of information with other regulators
- collect, analyse and publish statistics relating to work health and safety
- promote public awareness and discussion of work health and safety to the community.

Power of the regulator to require documents and information (section 155)

If WHSQ has reasonable grounds to believe a person is capable of giving information or documents in relation to a possible contravention of the WHS Act, or that will assist in monitoring or compliance, WHSQ can require the person to provide this after serving them with a written notice.

A person cannot refuse or fail to comply with a request without a reasonable excuse. A person is not excused from answering a question or providing information or a document on the ground that the answer to the question, or the information or document, may tend to incriminate the person or expose the person to a penalty. However, the answer or information or document, and other evidence directly or indirectly derived from the answer, information or document is not admissible as evidence against that individual in criminal or civil proceedings other than proceedings arising out of the false or misleading nature of the answer, information or document.

Functions and powers of inspectors (sections 156,160-162)

Inspectors have the following functions and powers:

- to provide information and advice about how to comply with the WHS Act
- to help resolve work health and safety issues
- to help resolve right of entry disputes
- to review a disputed PIN
- to issue notices to require compliance with the WHS Act
- to investigate contraventions and assist to prosecute offences.

An inspector in a workplace may require a person to provide information about and access to a document, as well as answers to questions. While inspectors will be able to compel answers, the answers to questions or information provided cannot be used as evidence against that person in civil or criminal proceedings. Inspectors may also copy and retain documents and seize evidence.

Powers of entry (sections 163-166)

An inspector may enter a workplace, or a suspected workplace, at any time with or without the consent of the person with management or control. If it is not a workplace they must leave immediately.

An inspector must show their identification or have the identification card on display when exercising a power under the WHS Act.

An inspector must advise the PCBU, person with management or control of the workplace and any HSR or WHSO for the workplace as soon as practicable after entering the workplace. This is not needed if it would defeat the purpose of entry or cause unreasonable delay.

An inspector entering a workplace can:

- inspect, examine and make inquiries
- inspect and examine anything, including documents
- bring and use any equipment or materials they may need
- take measurements, conduct tests, and make sketches or recordings (e.g. photographs, films, audio and video)
- take and remove samples for analysis.

A person may accompany an inspector to a workplace if the inspector requires assistance. An inspector can also require a person at a workplace to give them reasonable help to do these things. A person asked to assist must not, without reasonable excuse, refuse or fail to comply.

Search warrants (sections 167-169)

An inspector may apply to a magistrate for a search warrant. The magistrate must be satisfied there are reasonable grounds that there is, or may be within the next 72 hours, evidence of an offence against the WHS Act.

The warrant states the suspected offence, the evidence that may be seized, the time that the place may be entered, the date that the warrant ends and that the inspector may use reasonable help and force to enter the place and exercise their powers.

The authorised inspector must announce the warrant and give anyone at the place an opportunity to let them in before executing the warrant. This is not required if the inspector believes immediate entry is needed to ensure a person's safety or to avoid frustrating the execution of the warrant.

If the person with management or control of the workplace is present, the inspector must show their identification and provide a copy of the search warrant.

Enforcement measures

Improvement notices (sections 191-194)

An inspector may issue an improvement notice if they reasonably believe a person is contravening, or has contravened the WHS Act or WHS

Regulation in circumstances that make it likely that a contravention will continue or be repeated.

The notice will identify the provisions of the WHS Act that have or may have been contravened, the reasons for the notice, and a reasonable date to fix the contravention by. An improvement notice may also include directions and/or recommendations about how to fix or prevent a contravention.

A person issued with an improvement notice must comply.

Prohibition notices (sections 195-197)

An inspector may issue a prohibition notice if they reasonably believe an activity involves a serious risk to a person's health or safety from immediate or imminent exposure to a hazard.

The notice prohibits the activity continuing or being carried out in a specific way and is issued to the person with control over the activity. It may include directions on how to remedy the risk and remains in place until an inspector is satisfied the risk has been fixed.

A person issued with a prohibition notice must comply.

Non-disturbance notices (sections 198-201)

If an inspector believes it is necessary to enable them to exercise their powers, they may issue a non-disturbance notice to the person with management or control of a workplace.

A notice may require the person to preserve the site or prevent disturbance for up to seven days and must include the measures to be taken to do so. A person issued with a non-disturbance notice must comply.

Injunctions (section 215)

WHSQ may apply to the Magistrates Court for an injunction to require or compel a person to comply with a notice, or to restrain them from contravening a notice. An injunction can be sought even if separate proceedings are underway about a matter to which the notice relates.

Infringement notices

Infringement notices ('on the spot' fines) may be issued by inspectors as an alternative to prosecution for prescribed offences.

An infringement notice can be withdrawn by the person who issued it within 28 days of issue. The withdrawal of an infringement notice does not prevent other proceedings in relation to the alleged offence (unless the penalty has already been paid even if refunded).

If the penalty imposed by an infringement notice is paid within the set time, no proceedings may be taken for the offence and no conviction recorded. A payment cannot be taken as an admission of guilt or liability for any future civil claim. Prosecution may take place if penalties are not paid.

Remedial action (sections 211-213)

If a person to whom a prohibition notice is issued fails to take reasonable steps to comply with the notice, WHSQ take any remedial action it believes is reasonable to make the workplace or situation safe. WHSQ may also take remedial action to make a workplace safe if it reasonably believes there are circumstances in which a prohibition notice can be issued but the person with management or control of the workplace cannot be found.

The reasonable costs of undertaking the remedial action may be recovered as a debt due to WHSQ.

Enforceable undertakings (sections 216-222)

WHSQ may accept a work health and safety undertaking given by a person in connection with a contravention or an alleged contravention of the WHS Act. However, a work health and safety undertaking cannot be accepted for a Category 1 offence, a Category 2 offence, if the person's failure to comply with a health and safety duty results in the death of an individual, or an industrial manslaughter offence under the WHS Act.

An undertaking takes effect and becomes enforceable when WHSQs decision to accept it is given to the person.

A person who has made an undertaking may apply to WHSQ to change or withdraw the undertaking.

An undertaking is not an admission of guilt.

If a person contravenes a work health and safety undertaking, WHSQ may apply to the Magistrates Court. In addition to imposing a penalty for the breach, the court may make an order directing the person to comply with the undertaking or discharging the undertaking, as well as orders directing the person to pay the costs of the proceedings and the reasonable costs of monitoring compliance with the undertaking in the future.

In addition, if a person contravenes a work health and safety undertaking, proceedings for the contravention or alleged contravention of the WHS Act to which the work health and safety undertaking relates can be taken.

Review of decisions (sections 223-229)

Certain decisions made by inspectors and WHSQ can be reviewed. The WHS Act outlines which decisions can be reviewed and who can apply to have them reviewed. These are decisions that relate to:

- the failure to commence negotiations for work groups
- health and safety committees
- provisional improvement notices issued by HSRs
- forfeiture and return of seized goods or things

- issue of improvement, prohibition or non-disturbance notices and subsequent notices
- variation or cancellation of notices
- extension of time to comply with improvement notices.

Internal review

Inspectors' decisions are initially subject to internal review by WHSQ. The internal reviewer cannot be the person responsible for the initial decision. The internal reviewer must make a decision within 14 days after receiving an application, unless the reviewer receives further information from the applicant. The internal reviewer must decide whether to confirm the initial decision, vary it, or set it aside in favour of another course of action. A written decision must be sent to the applicant as soon as practicable.

If an application for review is made this generally imposes a stay on the operation of the decision until there is an outcome. However, for decisions relating to prohibition and non-disturbance notices, a separate application to stay the decision must also be made, or the reviewer can make a decision to stay the operation of the notice on their own initiative. A decision on an application for a stay on the operation of a prohibition notice or a non-disturbance notice must be made within one working day after the reviewer receives the application, otherwise the reviewer is taken to have made a decision to grant a stay.

A stay operates until the time allowed for making an external review expires or an application for external review is made.

External review

An eligible person may apply for an external review of a reviewable decision made by the regulator or an internal review decision. Depending on the decision to be reviewed, the matter may be reviewed by either the QIRC or the Queensland Civil and Administrative Tribunal (QCAT).

Offences and penalties (sections 30-34A-D)

Health and safety duty offences

The WHS Act provides for three categories of offences for breach of health and safety duties and outlines the maximum penalties that apply to an individual, a PCBU, a worker or an officer of a corporation or unincorporated association, and to a body corporate.

Category 1 – a duty holder engages in conduct that recklessly exposes a person to a risk of death or serious injury or illness. This offence is a crime and will be prosecuted in the District Court.

Category 2 – a duty holder fails to comply with a health and safety duty that exposes a person to risk of death or serious injury or illness.

Category 3 – a duty holder fails to comply with a health and safety duty.

Proceedings for Category 2 and 3 offences will be taken summarily in the Magistrates Court.

Industrial manslaughter – In 2017, the WHS Act was amended to include an industrial manslaughter offence. A PCBU or senior officer commits an offence if their negligent conduct causes the death of a worker. Where a PCBU, or senior officer, commits industrial manslaughter, a maximum penalty of 20 years imprisonment for an individual, or \$10M for a body corporate, applies.

Volunteers are exempt from prosecution for failure to comply with a health and safety duty owed by a PCBU (sections 19-26) or an officer of a corporation or unincorporated association (section 27). Volunteers cannot be prosecuted for industrial manslaughter. Volunteers are, however, liable for duties owed as workers (section 28) or other people at a workplace (section 29).

An unincorporated association is also exempt from prosecution. However, an officer of the unincorporated association (other than a volunteer) may be prosecuted for a failure to comply with an officer's duty (section 27) and a member of the association may be prosecuted for failure to comply with the duty of a worker (section 28) or of another person at a workplace (section 29).

Work Health and Safety Prosecutor

The functions of the Work Health and Safety (WHS) Prosecutor include conducting and defending proceedings under the WHS Act before a court or tribunal. The WHS Prosecutor must issue and publish on the WHS Prosecutor's website, general guidelines in relation to the prosecution of offences under the WHS Act.

Procedure if prosecution is not brought

If a person considers a Category 1 or 2 offence has occurred and no prosecution has been brought between six and twelve months of the alleged contravention, they can make a written request that a prosecution be brought. Similarly, a person can request that a prosecution be brought in relation to an industrial manslaughter offence if it has been at least six months since the alleged contravention and no prosecution has been brought.

The WHS Prosecutor has three months to advise of a decision. If the decision is not to prosecute, a person may make a written request to the WHS Prosecutor to refer the matter to the Director of Public Prosecutions within one month.

The Director of Public Prosecutions must consider the matter and advise the WHS Prosecutor within one month whether a prosecution should be brought. The WHS Prosecutor must provide a copy of the advice to the person who made the request and the person alleged to have committed the offence. If the WHS Prosecutor declines the advice, the reasons for declining must be provided to those receiving the advice.

Penalties for breach of industrial manslaughter and health and safety duty offences

Penalties for breach of industrial manslaughter and health and safety duty offences are outlined in the following table:

	Corporation	Individual as PCBU or officer	Individual as worker or other
Industrial manslaughter	\$10M for a body corporate	20 years imprisonment for an individual	N/A
Category 1	\$3 million	\$600,000 or five years jail	\$300,000 or five years jail
Category 2	\$1.5 million	\$300,000	\$150,000
Category 3	\$500,000	\$100,000	\$50,000

Alternative penalty options

In addition to the above penalties, courts may impose additional or alternative sentencing options. Other types of orders that can be made against offenders include:

- adverse publicity orders
- restoration orders
- work health and safety project orders
- court ordered work health and safety undertakings
- injunctions
- training orders.

Section of the WHS Act	Type of order	Information
Section 236	Adverse publicity orders	The court may make an adverse publicity order requiring the offender to publicise the offence, its consequences and the penalty imposed. It may also direct an offender to notify a specified person or group of people about the offence. The offender may also need to give the WHS Prosecutor evidence the order was carried out as instructed.
Section 237	Restoration orders	The court may order the offender to take steps to remedy anything that occurred as a result of the offence that it decides the offender has the power to address. It may choose to extend the restoration period but only if the application is made before the order expires.
Section 238	Work health and safety projects	The court may make an order requiring the offender to undertake a project for the general improvement of work health and safety within a set period, with conditions that must be complied with as part of the project.
Section 239	Court ordered work health and safety undertakings	The court may adjourn legal proceedings for up to two years and make an order for the release of the offender on a work health and safety undertaking. The court may require the offender to: appear before it if required, not commit any offences under the WHS Act, and observe any special conditions imposed.
Section 240	Injunctions	If a court finds a person guilty of an offence against the WHS Act, it may issue an injunction requiring the person to cease contravening the WHS Act.
Section 241	Training orders	A person may be ordered by the court to undertake, or arrange for one or more workers to undertake, a specified training course.

Other offences

There are a number of other offences under the WHS Act that relate to specific requirements and carry their own individual penalties.

Offences in relation to incident notification (sections 38, 39)

It is an offence to:

- fail to notify a notifiable incident (section 38)
- fail to preserve an incident site until an inspector arrives (section 39).

Offences in relation to authorisations (sections 41–45)

It is an offence to:

- carry on a business or undertaking at an unauthorised workplace (section 41)
- use unauthorised plant, equipment and substances at a workplace (section 42)
- carry out work without the required licence, permit or authorisation (section 43)
- carry out unsupervised work where supervision by a person with prescribed qualifications or experience is required (section 44)
- not comply with the conditions of any licence, permit or authorisation (section 45).

Offences in relation to consultation (sections 46, 47)

It is an offence to:

- not consult with other duty holders (section 46)
- not consult with workers (section 47).

Offences in relation to the establishment of work groups (sections 52–57)

It is an offence to:

- fail to negotiate with workers or their representative regarding the formation of work groups at a workplace (sections 52, 56)
- fail to notify workers of the outcome of negotiations regarding the formation of work groups at a workplace (sections 53, 57).

Offences in relation to health and safety representatives (sections 61, 70–74, 97, 99)

It is an offence to:

- fail to negotiate with a HSR on health and safety matters
- fail to provide a HSR with access to information regarding hazards and safety of workers
- fail to allow a HSR to attend interviews with an inspector or PCBU concerning health and safety issues
- fail to provide resources, facilities and assistance to elect a HSR and allow them to carry out their health and safety duties
- prevent a HSR from accompanying an inspector during an inspection of the workplace
- deny a person assisting a HSR access to the workplace providing the required notice of entry has been given
- fail to allow a HSR time off with pay to attend to their health and safety duties
- provide a HSR with access to personal or medical information of a worker without the worker's consent unless it is released in a form that does not identify the worker
- fail to ensure, so far as is reasonably practicable, a HSR has completed prescribed training
- fail to provide a HSR with access to information relating to hazards at the workplace

- fail to keep an up-to-date list of HSRs at the workplace and ensure it is readily accessible to all workers, and a copy is given to the regulator
- fail to display a provisional improvement notice (section 97)
- contravene a provisional improvement notice (section 99).

Offences in relation to health and safety committees

(sections 75, 79)

It is an offence to:

- fail to establish an HSC within two months of being requested to do so (section 75)
- fail to allow members of the committee time off with pay to comply with their health and safety duties (section 79).

Offences in relation to discriminatory, coercive or misleading conduct (sections 104–108)

It is an offence to:

- engage in discriminatory conduct for a reason prohibited under the WHS Act (section 107)
- organise or take, or threaten to organise or take, any action against another person with intent to coerce or induce that person, or a third person, to exercise or not exercise a power or perform or not perform a function under the WHS Act (section 108)
- knowingly or recklessly make a false or misleading representation to another person regarding their rights, obligations or abilities under the WHS Act (section 109).

Offences in relation to WHS entry permit holders

(sections 118–151)

It is an offence for a person to:

- refuse or fail to provide documentation or information relating to a suspected breach of the WHS Act (section 118)
- refuse or unduly delay, or intentionally and unreasonably hinder or obstruct entry to a workplace by an entry permit holder (sections 144, 145).

It is an offence for a WHS entry permit holder to:

- contravene a condition of the WHS entry permit (section 123)
- enter a workplace unless they also hold an entry permit under the *Fair Work Act 2009* (Cth) or an industrial officer authority (section 124)
- fail to have the work entry permit available for inspection (section 125)
- enter the workplace outside normal working hours (section 126)
- fail to comply with any reasonable request to comply with work health and safety requirements at the workplace (section 128)
- enter any part of the workplace that is only used for residential purposes (section 129)
- intentionally and unreasonably delay, hinder or obstruct any person or disrupt work at the workplace (section 146)
- give the impression that the taking of some action is authorised under the WHS Act when it is not (section 147)
- disclose information or a document about a suspected health and safety breach for a purpose that is not related to an inquiry (section 148)
- fail to return the permit to the authorising authority within 14 days of the permit expiring being revoked or suspended (section 149).

It is an offence for a union to:

- fail to notify the industrial registrar when the entry permit holder resigns and leaves the union, or the entry permit holder has previously had a permit cancelled or suspended, or the union ceases to be a registered organisation (section 150).

In addition, a person commits an offence if they contravene an order of the QIRC regarding a dispute about the exercise or purported exercise by a WHS permit holder of a right of entry under the WHS Act (section 143).

Offences in relation to the regulator and inspectors

(sections 155-190)

It is an offence to:

- refuse or fail to answer questions and provide information and documentation requested by Workplace Health and Safety Queensland without reasonable excuse (section 155)
- refuse or fail to assist an inspector without reasonable excuse (section 165)
- refuse or fail to comply with an inspector's request to answer questions or produce a document without reasonable excuse (section 171)
- tamper with a thing the access to which has been restricted by an inspector (section 177)
- refuse or fail to comply with a direction from an inspector, including providing your name and address, without reasonable excuse (section 185)
- intentionally hinder or obstruct an inspector while they are carrying out their duties, or to induce or attempt to induce another person to do so (section 188)
- impersonate an inspector (section 189)
- assault, threaten or intimidate an inspector or a person assisting an inspector (section 190)
- fail to comply with an improvement notice (section 193)

- fail to comply with a prohibition notice (section 197)
- fail to comply with a non-disturbance notice (section 200)
- intentionally remove, destroy, damage or deface a notice required to be displayed (section 210)
- fail to comply with a WHS undertaking (section 219)
- fail to comply with a court order (section 242)
- give false or misleading information (section 268)
- disclose confidential information obtained while exercising a power or function under the WHS Act (other than in relation to a permit holder entry to a workplace) (section 271)
- impose a levy or charge on a worker for anything done or provided in relation to work health and safety (section 273).

Authorisations

Authorisations (e.g. licences, permits and registrations) are required for certain types of work, some workplaces and the use of some plant.

Workplaces (section 41)

The WHS Regulation requires some workplaces (e.g. major hazard facilities and major amusement parks) to be approved or authorised. A person must not conduct a business or undertaking, or direct or allow a worker to carry out work, if the workplace is not authorised in accordance with the WHS Regulation.

Plant (section 42)

A PCBU must not direct or allow a worker to use plant or equipment if it is not authorised.

Under the WHS Regulation, the following items of plant require registration of their design:

- pressure equipment, other than pressure piping and heritage boilers
- gas cylinders covered by Part 1.1 of AS2030.1
- tower cranes, including self-erecting tower cranes (excluding cranes or hoists that are manually powered, scissor lifts, vertically moving platforms, reach stackers and tow trucks)
- lifts, including escalators and moving walkways
- building maintenance units
- hoists with a platform movement exceeding 2.4 metres, designed to lift people
- work boxes designed to be suspended from cranes
- amusement devices covered by section 2.1 of AS3533 (except Class 1 amusement devices, inflatable devices with a platform height less than 3 metres, playground structures, water slides, wave generators)
- concrete placing booms

- prefabricated scaffolding
- boom type elevating work platforms
- gantry cranes with a safe working load maximum rated capacity greater than 5 tonnes, or bridge cranes with a safe working load maximum rated capacity of greater than 10 tonnes, and any gantry crane or bridge crane which is designed to handle molten metal or Schedule 11 hazardous chemicals
- vehicle hoists
- mast climbing work platforms
- mobile cranes with a rated capacity of greater than 10 tonnes.

Under the WHS Regulation the following items of plant and equipment are required to be registered:

- certain boilers and pressure vessels
- tower cranes, including self-erecting tower cranes (excluding cranes and hoists that are manually powered and reach stackers)
- lifts, including escalators and moving walkways
- building maintenance units
- amusement devices covered by section 2.1 of AS3533 (except Class 1 amusement devices, inflatable devices with a platform height less than 3 metres, playground structures, water slides, wave generators)
- concrete placing booms
- mobile cranes with a rated capacity of greater than 10 tonnes.

Work (section 43)

A PCBU must not direct or allow a worker to carry out work if it is required to be done by an authorised person. Under the WHS Regulation, the following high risk work must only be performed by people who have been authorised (i.e. licensed) to carry out that particular type of work:

- scaffolding
- dogging and rigging
- crane and hoist operation

- reach stackers
- forklift operation
- pressure equipment operation.

Prescribed qualifications and experience (section 44)

The WHS Regulation requires the following types of work only to be carried out or supervised by a person with prescribed qualifications or experience:

Diving:

- general diving work (sections 171 and 177 WHS Regulation)
- incidental diving work (section 172 WHS Regulation)
- limited scientific diving work (section 173 WHS Regulation)
- high risk diving work (sections 183 and 184 WHS Regulation)

Plant:

- maintenance, repair, inspection and testing of registered mobile cranes and tower cranes (section 235 WHS Regulation)
- maintenance, repair, inspection and testing of amusement devices (sections 240, 241, 241A WHS Regulation)
- verification of plant design (section 252 WHS Regulation)

Construction:

- all construction work requires general construction induction training (sections 316 and 317 WHS Regulation)

Management of asbestos:

- identification of asbestos at a workplace (section 422 WHS Regulation)

Asbestos related work:

- air monitoring of the work area where asbestos related work is being carried out (section 482 WHS Regulation)

In the case of asbestos removal work, the WHS Regulation requires the:

- asbestos removalist to be licensed (section 458 WHS Regulation)
- asbestos removal supervisor for Class A (friable) asbestos removal work to meet specific training and experience requirements (section 493 WHS Regulation)
- asbestos removal supervisor for Class B (non-friable) asbestos removal work carried out by more than one person to meet specific training and experience requirements (section 529 WHS Regulation)
- workers carrying out licensed removal work to hold certification in relevant units of competency (section 460 WHS Regulation)
- clearance inspection for Class B (non-friable) asbestos removal work to be undertaken only by competent person (section 473 WHS Regulation)
- clearance certificate in relation to Class B (non-friable) asbestos removal work to be issued only by a competent person (section 474 WHS Regulation)
- air monitoring during Class A (friable) asbestos removal work to be undertaken only by a licensed asbestos assessor (section 489 WHS Regulation)
- clearance inspection for Class A (friable) asbestos removal work to be undertaken only by a licensed asbestos assessor (section 489 WHS Regulation)
- clearance certificate in relation to Class A (friable) asbestos removal work to be issued only by a licensed asbestos assessor (section 489 WHS Regulation)
- second clearance inspection by an independent competent person if improvement or prohibition notice issued where asbestos removal area still contains asbestos after a clearance certificate issued and cost must not be recouped from owner or occupier of the area (section 474A WHS Regulation).

Major amusement parks:

- major amusement parks must be licensed (sections 6o8D WHS Regulation)
- the operator of a major amusement park must give the regulator safety case outline that complies with certain criteria (sections 6o8G-6o8J WHS Regulation)
- the operator of a major amusement park must give the regulator an amusement park safety case that complies with required criteria within 2 years (sections 6o8Q-6o8T WHS Regulations).

Glossary

Authorised means authorised or approved by a licence, permit, registration or other authority as required by the WHS Regulation.

Dangerous incident means an incident in a workplace that exposes a worker or any other person to a serious risk to health and safety from an immediate hazard or one about to happen, for example a spillage, explosion or electric shock.

Discriminatory conduct means dismissing a worker, terminating their contract, altering a worker's position, or in any other way doing something to the detriment of the worker. It can also mean failing

to engage a prospective worker, treating a prospective worker less favorably than another, terminating a commercial arrangement, or failing to enter into a commercial arrangement. Threatening to take any of this action is also discriminatory conduct.

Fair Work Act means the Commonwealth *Fair Work Act 2009*.

Health and safety duty means a duty relating to health and safety imposed in Part 2 of the WHS Act.

Inspector means an inspector appointed under Part 9 of the WHS Act

Internal reviewer means a person appointed by Workplace Health and Safety Queensland to review decisions made by inspectors.

Notifiable incident means an incident involving the death, serious injury or illness of a person, or a dangerous incident.

Official of a union means a person who holds an office in or is employed by a registered trade union.

Prohibited reason means conduct referred to in section 106 of the WHS Act if it is engaged in because the worker, or prospective worker, has been, or proposes to be a HSR or a member of an HSC or exercises power in those roles, amongst other reasons, for example exercising another power under the WHS Act but not as a HSR or HSC member.

Union means:

- an employee organisation that is registered, or taken to be registered, under the *Fair Work (Registered Organisations) Act 2009* (Cth)
- an employee organisation under the *Industrial Relations Act 2016* (Qld); or
- an association of employees or independent contractors, or both, registered as such under a state or territory industrial law.

WHS entry permit means a permit that can be issued to a union official, allowing them to enter a workplace to investigate a suspected contravention of the WHS Act.

WHS undertaking means a written undertaking given by a person (often the PCBU) to Workplace Health and safety Queensland relating to a breach or alleged breach of the WHS Act.

More information

To obtain a copy of the WHS Act, go to www.legislation.qld.gov.au

For further information visit www.worksafe.qld.gov.au or phone **1300 362 128**.

