Guide to the *Work Health and Safety Act 2011*

Office of Industrial Relations

DELIVERING FOR QUEENSLAND

Queensland Government

Copyright

Published by the Queensland Government, **January 2026**, 1 William St, Brisbane Qld, 4000.

Contents

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.

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 fair and 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
- 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* (Qld)
- *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*
- *Rail Safety National Law* (Qld)
- *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 (sections 26A and 274-275)

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.

Persons conducting a business or undertaking (PCBU) 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.

The Minister must ensure a code of practice is reviewed at least every five years.

Definitions (sections 4-8, 45A-45B, Schedule 5)

The following terms are used throughout this guide:

Excluded entity – an entity that is not allowed to represent or assist a worker or a health and safety representative for a worker.

Excluded entities include those who purport to represent industrial interests of workers or employers but are not registered unions of employees under the *Fair Work (Registered Organisations) Act 2009* (Cth) or the *Industrial Relations Act 2016* (Qld).

An excluded entity also includes an entity that demands or receives a fee from another excluded body, and any officers, employees, or agents of an excluded body.

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 9AD 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).

Examples of entities that are **not** a PCBU include an elected member of government acting in that capacity, a volunteer association working for one or more community purposes which does not employ a worker, and a strata title body corporate which does not employ a worker.

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

Plant – any machinery, equipment, appliance, container, implement or tool, as well as any component of any of those things and anything fitted or connected to any of those things.

Relevant Union – a union of which the worker is a member, or is eligible to be a member, and whose rules entitle the union to represent the worker's industrial interests. The union must be an employee organisation registered under the *Fair Work (Registered Organisations) Act 2009* (Cth) or *Industrial Relations Act 2016* (Qld).

Representative – in relation to a worker, either the health and safety representative for the worker or another suitable entity that is authorised by the worker to represent them.

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), and may include a component or part of a structure.

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

Suitable entity – represents or assists a worker or an HSR. Can be a relevant union or another entity authorised by the worker or representative to assist them (e.g. a technical expert such as an engineer) provided they are not an *excluded entity*.

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) which are formed to elect the HSR(s) who will represent them.

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’ (section 18) 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 director of a company may have 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 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, such as visitors to the workplace.

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 and 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.

If one or more workers asks, the PCBU must also consult with the worker's representative e.g. a worker may ask for their union to represent them.

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) (sections 22-25)

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.

Table 1 The responsibility of different duty holders

Duty holder	Duty to ensure health and safety in the workplace	Duty to test	Duty to provide information
Designers of plant, structures or substances (section 22)	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 and safety.	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 and safety.	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 and safety, when used for its intended purpose.
Manufacturers of plant, structures or substances (section 23)	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.	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 and safety when used for a purpose for which it was manufactured.	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 and safety.

Duty holder	Duty to ensure health and safety in the workplace	Duty to test	Duty to provide information
Importers of plant, substances or structures (section 24)	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.	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 and safety when used for its intended purpose. Alternatively, importers 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 imported, test results and any conditions necessary to ensure that when used for its intended purpose it is safe and without risks to health and safety.
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 and 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 and 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 and 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:
  - with microorganisms
  - that involves providing treatment to a person
  - that involves contact with human blood or body substances, or
  - 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:
  - Q fever
  - Anthrax
  - Leptospirosis
  - Brucellosis
  - Hendra Virus
  - Avian Influenza
  - 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
- the collapse or failure of 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) (section 466, WHS Regulation)
- asbestos fibre levels greater than 0.02 f/ml (licensed asbestos removalist – for Class A removal work) (section 476, WHS Regulation)
- asbestos emergency work - domestic premises (PCBU who is to carry out demolition work – for demolition work) (section 455, WHS Regulation)
- asbestos emergency work - non-domestic premises (PCBU with management or control of the workplace – for demolition work) (section 454, WHS Regulation)
- lead risk work (section 403, WHS Regulation)
- changes to information regarding lead risk work (section 404, WHS Regulation)
- worker who is removed from carrying out lead risk work (section 415, WHS Regulation)
- health monitoring reports (section 442, WHS Regulation)
- abandoned tanks (section 367, WHS Regulation)
- transfer of hazardous chemicals through pipelines (section 391, WHS Regulation)
- hazardous chemicals exceeding manifest quantities at a workplace (section 348 and Schedule 11, WHS Regulation)
- hazardous chemicals exceeding 10 per cent of their threshold quantity (section 536, 537 and Schedule 15, WHS Regulation)

Consultation with workers and representation of workers

Consultation, cooperation and coordination (sections 45A-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 an HSR or a suitable entity, such as a relevant union, is representing workers, the consultation must involve them and consultation must be carried out only at a time and place agreed by all the parties.

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 an HSR
- request the formation of a health and safety committee
- cease unsafe work if they have a reasonable concern that carrying out their work will expose them to a serious risk to their health or safety because there is an immediate or imminent exposure to a hazard
- have health and safety issues resolved in accordance with an agreed issue resolution procedure.

Work groups (sections 51-57)

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 an 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 a PCBU to determine a work group, a PCBU must take all reasonable steps to complete negotiations with the parties within 14 days, but this timeframe can be extended if agreed by the parties.

The parties to negotiations include:

» the PCBU
» the workers who are proposed to form the work group or their representative e.g. a suitable entity
» a relevant union for a worker if the union notifies the PCBU in writing that they want to be a party to the negotiation and agreement.

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 relevant union may also be included in these consultations if they have notified the PCBU in writing.

Variations to agreements can also be negotiated. At any time, the parties to a work group agreement may negotiate a variation if circumstances change or if the existing arrangements are no longer satisfactory e.g., if another HSR is needed or the PCBU is restructured.

If negotiations fail in establishing a work group, or establishing 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.

Parties are able to dispute decisions made by the inspector by lodging a notice with the Queensland Industrial Relations Commission (QIRC).

Health and safety representatives (sections 50 and 74)

An 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.

A maximum penalty of 20 penalty units ($2000 for an individual) applies for failing to keep this list and provide it to Workplace Health and Safety Queensland when it is prepared or amended.

Powers and functions (sections 68-69)

The role of an 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.

An HSR can:

- represent the work group in health and safety matters
- monitor the measures taken by the PCBU in compliance with the WHS Act
- investigate complaints from members of the work group
- inquire into any risk to the health or safety of workers in the work group
- inspect the workplace or any area where work is carried out by a worker in the work group
- accompany a WHS entry permit holder entering the workplace for a suspected contravention related to their work group
- accompany an inspector during an inspection of the workplace or part of the workplace at which a worker in the work group works
- be present at an interview between 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
- request and receive information about the health and safety of workers in the work group (not including personal or medical information unless the worker has provided consent)
- request the assistance of a suitable entity
- direct a worker to cease unsafe work.

A PCBU must give HSRs the resources, facilities and assistance needed for them to carry out their functions. This may include providing access to a telephone or computer with internet access to send emails or attend online meetings or providing access to a vehicle so the HSR can travel between different workplaces of the work group.

Election and eligibility (sections 50-50B, 60-67)

The members of a work group elect their own HSR. All members of the work group decide how to elect the HSR, are able to vote in an election, and must be notified of its outcome.

PCBUs must notify workers about their right to elect an HSR. This notification must happen:

» as soon as possible after the business or undertaking is first conducted, or
» within one year after the notification and invitation were last given, or
» as soon as reasonably practicable after the day the current HSR's term ends or they cease to hold office.

The notification must be made in writing and include the following matters:

» their right to request an election for one or more HSRs
» the process for determination of work groups
» who is eligible to represent the workers in negotiations
» the process for election of HSRs
» the powers and function of an HSR.

Workplace Health and Safety Queensland has prepared guidance which is available on the WorkSafe website to assist PCBUs to meet this notification requirement.

Upon a request for the election of an HSR, a PCBU must provide any reasonable resources, facilities and assistance to carry out the election. Elections for a deputy HSR are carried out in the same way.

To be eligible for election, a person must be a member of the work group and not be disqualified from acting as an HSR. The term of office for an HSR or deputy HSR is three years. They cease to hold office if:

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

A PCBU must not hinder, prevent or discourage the members of a work group from requesting the election and may face penalties if they do. The maximum penalty for this offence is 200 penalty units ($20,000 for an individual).

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 an HSR exercising their powers or functions for an improper purpose, or an HSR using or disclosing information acquired in their role for any other purpose other than their HSR role, can apply to the QIRC to have the HSR disqualified.

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

Training (section 72, section 21 – WHS Regulation)

The PCBU has a duty to ensure all relevant training has been provided to the HSR so they can perform their functions and exercise their powers under the WHS Act.

An HSR must complete an initial five-day training course approved by Workplace Health and Safety Queensland within 28 days of their election, or as soon as practicable if the initial five-day course is not reasonably available.

An HSR must have completed the five-day training course before they can issue a provisional improvement notice (PIN) or give a direction to cease unsafe work.

HSRs are entitled to complete a one-day refresher training course approved by Workplace Health and Safety Queensland at least every 12 months.

HSRs are allowed to choose their own training provider and the PCBU must allow the HSR to attend the training and pay the course costs and reasonable expenses. HSRs must also be paid the amount they would usually earn when they attend their required training, including any of their usual overtime, penalties and/or allowances.

If there are any disputes regarding training, allowing time off to attend training, or paying the training fees or wages and other entitlements, either the PCBU or HSR may request for a WHS inspector to assist in resolving the matter.

Provisional improvement notices (sections 90-102)

An HSR may issue a provisional improvement notice (PIN) if the HSR reasonably believes that a person:

» is contravening the WHS Act, or

» has contravened the WHS Act and it is likely that the contravention will continue or be repeated.

Prior to issuing the PIN, an HSR must consult with the person and try to resolve the problem. Attempts to consult may be either verbal or in writing, and should:

» provide information and offer potential ways to remedy the contravention

» take into account the other person's views

» allow the person a reasonable time to remedy the alleged contravention or resolve the matter, and

» advise the person of the outcome of consultation in a timely manner.

Consultation can have occurred even if the relevant person does not respond to the HSR in a reasonable time or there is no agreement. There does not have to be a two-way exchange, only the opportunity for this to occur. The time period for consultation or degree of consultation required will depend on the circumstances and must be reasonable for the relevant circumstances.

Issuing a 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
- how the provision is being or has been contravened
- the date by which the contravention must be remedied, which must be at least four days from the issue date.

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. They must also give Workplace Health and Safety Queensland a copy of the notice as soon as possible.

Request to review a PIN

The regulator can appoint an inspector review the notice if asked by either:

- the person the PIN was issued to, or
- the PCBU, if the PIN was issued to a worker of that workplace.

This request must be made within three days of being issued with a PIN.

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.

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 an HSC as soon as practicable but no later than 28 days after being requested to do so by an HSR, or by five or more workers in a workplace.

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

At least half of the members of an HSC must be workers that have not been nominated by the PCBU. An 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.

If agreement cannot be reached on the composition of an HSC, any party related to the constitution of the committee can request the regulator to appoint an inspector to assist them reaching an agreement.

Once appointed, an inspector has seven days to either decide the constitution of the HSC, or that an HSC should not be established. The parties can appeal an inspector's decision to the QIRC.

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 certificate of authority can be issued by Workplace Health and Safety Queensland or an approved registered training authority.

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.

In performing their role, an HSR may become aware of situations where they have a reasonable concern that workers in their work group may be exposed to a serious health and safety risk if they carry out their work. HSRs are able to stop this unsafe work.

In most cases, an HSR's direction to stop work should be given via the required written notice only after the HSR has attempted to consult with the PCBU to resolve the issue.

However, there may be circumstances where the risk to workers is so serious and immediate or imminent that workers should be directed to stop work (or not start their work) before consultation occurs. In this case, the direction can be made verbally to workers, with the written notice given to the PCBU and consultation to resolve the issue happening as soon as possible after that.

The HSR, PCBU or worker may also:

» ask Workplace Health and Safety Queensland to appoint an inspector to assist in resolving an issue arising in relation to ceasing work, or
» immediately apply to the QIRC for an order in relation to the issue.

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

Issuing a cease work notice to workers after consultation has failed to resolve the issue

An HSR may issue a written cease work notice to workers if—

» the worker is in a work group represented by the HSR
» the HSR has a reasonable concern that carrying out the work would expose a worker to a serious risk to the worker's health or safety, emanating from an immediate or imminent exposure to a hazard
» the HSR has consulted the PCBU, and the matter remains unresolved after attempting to resolve the matter
» the HSR has completed the relevant HSR training.

Workers can be redirected to suitable alternative work at their workplace or at another site until they can resume normal duties.

The HSR must display a copy of the cease work notice in a prominent way in an area used by the workers who are in the work group. For example, on a noticeboard, circulated via email, or posted on the staff intranet page.

The notice should be displayed as soon as possible.

Issuing an immediate cease work direction to workers

If carrying out work would expose workers to a risk that is so serious and immediate or imminent that it is not reasonable to consult, an HSR may:

» direct the worker, or workers in the HSR's work group, to cease work
» give this direction without consulting the PCBU or attempting to resolve the matter first.

In this situation, a direction to stop unsafe work can be given verbally.

However, as soon as possible after issuing this cease work direction, the HSR must:

» prepare a cease work notice
» give a copy of the cease work notice to the PCBU
» consult with the PCBU to attempt to resolve the matter
» display a copy of the notice in a prominent way in an area used by the workers who are in the work group.

Contents of a cease work notice

A cease work notice must include:

» details of the HSR, workgroup, PCBU and the person the notice was given to
» confirmation the HSR has completed the required training
» whether the direction was given after consultation with the PCBU failed to resolve the issue, or if the direction was given verbally due to the immediate nature of the risk
» a brief description of the concern and basis for that concern with reference to the risk to a worker's health or safety
» the work that, if carried out, will expose the worker to a serious risk to their health or safety, and
» the date and time the notice was issued, or when the direction was given.

When a cease work direction is effective

A cease work direction remains effective until:

» it is withdrawn in writing by the HSR
» the issue is resolved with the assistance of an inspector
» an inspector issues a prohibition notice in relation to the matter, or
» the QIRC decides or deals with the dispute.

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 to an issue are:

» the PCBU or their representative, provided the representative is not an HSR and they have the appropriate level of seniority and are sufficiently competent to act as the PCBU's representative
» each PCBU or their representative, if the issue involves more than one PCBU
» if an HSR has been elected for the work group affected by the issue, the HSR or a suitable entity representing the HSR
» if the worker(s) are in a work group but no HSR has been elected yet, the worker(s) or a suitable entity representing the worker(s)
» if the worker(s) are not in a work group, the worker(s) or their representative

- the relevant union, if the PCBU is notified in writing that the union wishes to be a party to the issue.

A PCBU must allow all the parties to enter and remain at 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 an HSR from issuing a PIN.

Although an inspector cannot determine the issue, the inspector may still exercise any of their compliance powers under the WHS Act.

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

The QIRC is able to hear disputes about certain WHS matters, including:

- work group determinations and variations
- HSRs accessing information about hazards at the workplace, the health and safety for workers in their work groups, relevant notices and notifiable incidents
- an HSR's request for a suitable entity assisting them to have access to the workplace
- HSR prescribed training
- HSC matters
- cease work directions
- health and safety issues referred to an inspector (see Issue Resolution above).

Parties to a WHS dispute may include:

- a PCBU
- a worker affected by the WHS matter
- an HSR affected by the WHS matter
- a relevant union affected by the WHS matter
- a representative for a worker affected by the WHS matter.

A party to the dispute can provide written notice to the industrial registrar for the dispute to be heard by the QIRC.

There is no time period that parties must wait to provide their notice to the QIRC.

Once a party has lodged a notice with the QIRC, an inspector can no longer be appointed to assist in resolving the dispute. If an inspector has already been appointed, they must take no further action or make any further attempts to resolve the dispute unless the QIRC requests their ongoing assistance in the dispute.

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 than other workers, 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, WHS 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 also engages 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).

Under the WHS Act, a maximum penalty of $100,000 applies if a person is found to have engaged in this form of conduct for a prohibited reason.

Entry permit holders (sections 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*.

A WHS entry permit allows the holder to investigate suspected contraventions of the WHS Act, meet with workers and exercise their legal rights under WHS Act.

Unless revoked earlier, WHS entry permits are valid for three years from the date of issue and expire:

- at the end of the term, or
- when the WHS entry permit holder either ceases to be a union official or the union granted the permit is no longer a registered employee organisation.

A WHS entry 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 and remain in 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, WHS entry permit holders are required to provide the PCBU and the person with management or control of the workplace a minimum of 24 hours' notice before entering the workplace.

However, providing this minimum notice period is not required if the WHS entry permit holder reasonably believes that a worker is exposed to a serious risk to their health and safety emanating from an immediate or imminent exposure to a hazard. In this situation, the WHS entry permit holder should give the PCBU with the relevant notice as soon as reasonably practicable after entering the workplace.

Subject to the use and disclosure of personal information requirements under the WHS Act and under the *Privacy Act 1988* (Cth), an entry permit holder can inspect or make copies of employee records that are directly relevant to the contravention.

The WHS entry permit holder may also enter a different workplace, inspect and make copies of documents that are relevant to the matter, but not held by the PCBU. A 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 WHS entry permit holder's entry to a workplace, or obstruct them from exercising their rights. Workplace Health and Safety Queensland has developed guidance to assist PCBUs and WHS entry permit holders about workplace entry, which is available on the WorkSafe website.

Consulting workers (sections 121-122)

A WHS entry permit holder may enter a workplace to consult or provide advice to workers on health and safety matters. At least 24 hours', but not more than 14 days, 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 an inspector to attend the workplace to assist with resolving the matter. These parties include:

- a WHS entry permit holder
- the relevant union
- the relevant PCBU
- any other person in relation to whom the WHS entry permit holder has exercised or purported to exercise the right of entry
- any other person affected by the exercise or purported exercise of the right of entry by a WHS entry permit holder
- the regulator.

Where a dispute remains unresolved, any relevant party can make an 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)

A WHS entry permit may be revoked by the QIRC if a holder no longer meets the necessary eligibility criteria, 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 an entry permit 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 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 relating to information (section 155)

If Workplace Health and Safety Queensland 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, Workplace Health and Safety Queensland 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 and is not excused from:

- responding to a request if they are located outside the state or if the notice relates to a matter outside their current state
- 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 derived from them, will only be admissible as evidence in proceedings arising out of the false or misleading nature of the answer, information or document. It is not admissible as evidence against an individual in other criminal or civil proceedings.

Power of the regulator to give particular information to particular persons (section 271)

A person that has obtained information under the powers of the WHS Act is not able to:

- disclose to anyone else:
  - the information, or
  - the contents of or information contained in the document
- give access to the document to anyone else
- use the information or document for any purpose.

A maximum penalty of 100 penalty units ($10,000 for an individual) applies to a person who improperly uses or discloses this information.

Situations where the person can disclose information or provide access to a document include, subject to the *Privacy Act 1988* (Cth), where the information is:

- about person, with the person's consent
- necessary for the exercise of a power or function under the WHS Act
- made or given by the regulator or an authorised person by the regulator
- required by any court, tribunal, authority or person having lawful authority to require the production of documents or the answering of questions
- required or authorised under a law
- provided to a Minister.

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)

Workplace Health and Safety Queensland 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 under the means an infringement notice under the *State Penalties Enforcement Act 1999.*

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.

It is an offence for a person to take out, provide, or benefit from an insurance policy protecting against paying monetary penalties.

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, Workplace Health and Safety Queensland may take any remedial action it believes is reasonable to make the workplace or situation safe.

Workplace Health and Safety Queensland 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 Workplace Health and Safety Queensland.

Enforceable undertakings (sections 216-222)

Workplace Health and Safety Queensland 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 Workplace Health and Safety Queensland's decision to accept it is given to the person.

A person who has made an undertaking may apply to Workplace Health and Safety Queensland to change or withdraw the undertaking.

An undertaking is not an admission of guilt.

If a person contravenes a work health and safety undertaking, Workplace Health and Safety Queensland may apply to the Magistrates Court. In addition to imposing a penalty for the breach, the Magistrates 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 Workplace Health and Safety Queensland 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:

» 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 (sections 224-228)

Inspectors' decisions are initially subject to internal review by Workplace Health and Safety Queensland. 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 (section 229)

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

There are three categories of offences for breach of health and safety duties:

- **Category 1** – a duty holder engages in negligent or reckless conduct that 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.

Maximum penalties depend on the offence and apply to an individual, a PCBU, a worker or an officer of a corporation or unincorporated association, and to a body corporate (see table below).

Industrial manslaughter

A PCBU or senior officer commits an offence if their conduct, including negligent conduct, causes the death of any person they owe a health and safety duty.

Where a PCBU or senior officer commits industrial manslaughter, a maximum penalty of 20 years imprisonment for an individual, or $10 million for a body corporate, applies.

If a person is charged with the offence of industrial manslaughter, they may be alternatively convicted of a Category 1 or Category 2 offence. A person can only be convicted of one of these alternative offences if the offence has been established by the evidence presented during proceedings for industrial manslaughter beyond a reasonable doubt.

Exemptions

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

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 and a member of the association may be prosecuted for failure to comply with the duty of a worker or with the duty of another person at a workplace.

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 (section 231)

If a person considers a Category 1 or 2 offence has occurred and no prosecution has been brought, they can make a written request to the WHS Prosecutor that a prosecution be brought. This request can be made if it has been between six and eighteen months since the alleged contravention.

It may be the case that a person learns about the alleged contravention from a coronial report or during the proceedings for a coronial inquiry or inquest. In these circumstances, a person can only make their request for a prosecution within six months of the report being made or the relevant proceedings ending.

Similarly, a person can request in writing to the WHS Prosecutor that a prosecution be brought in relation to an industrial manslaughter offence if it has been at least six months since the alleged offence 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 industrial manslaughter and breaches of health and safety duty offences are outlined in the following table:

Table 2 Penalties for industrial manslaughter and health and safety duty offences

	Corporation	Individual as a PCBU or officer	Individual as worker or other
Industrial manslaughter	$10 million 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.

Table 3 Additional or alternative penalties

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 50A, 61, 62A, 70–74, 97, 99)

It is an offence to:

- intentionally hinder, prevent or discourage a worker from requesting an election for an HSR, the actual election of an HSR or deputy HSR, or following the procedures for election prescribed by the WHS Regulation (sections 50A, 62A)
- fail to negotiate with an HSR on health and safety matters (section 70)
- fail to provide an HSR with access to information regarding hazards and safety of workers (section 70)
- fail to allow an HSR to attend interviews with an inspector or PCBU concerning health and safety issues (section 70)
- fail to provide resources, facilities and assistance to elect an HSR and allow them to carry out their health and safety duties (sections 61, 70)
- prevent an HSR from accompanying an inspector during an inspection of the workplace (section 70)
- deny a suitable entity assisting an HSR access to the workplace providing the required notice of entry has been given (section 70)
- fail to allow an HSR time off with pay to attend to their health and safety duties (section 70)
- provide an 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 (section 71)
- fail to ensure, so far as is reasonably practicable, an HSR has completed prescribed training (section 72)
- fail to provide an HSR with access to information relating to hazards at the workplace (section 70)
- 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 (section 74)
- 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 28 days of being requested to do so (section 75)
- fail to allow members of the committee time off with pay to comply with their obligations to attend meetings and carry out functions (section 79)

- deny the health and safety committee for a workplace access to information relating to hazards at the workplace and the health and safety of the workers at the workplace (section 79)
- provide access to personal or medical information concerning a worker without the worker's consent unless deidentified and could not reasonably lead to identification (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 104)
- request, instruct, induce, encourage, authorise or assist another person to engage in discriminatory conduct (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 relating to indemnity against penalties (sections 272A-272AB)

It is an offence for a person to enter, provide, or benefit from, a contract of insurance that claims to insure a person against liability for offences under the WHS Act (section 272A). Where it is not a stand-alone contract, but a term in an existing contract that purports to insure a person against liability for offences under the WHS Act, that term will be void.

If a body corporate commits an offence under this section, each officer is taken to also have committed the offence if they authorised or permitted the conduct, or they were knowingly involved in the conduct. An officer may have a prosecution brought against them for an offence under this section irrespective of whether the body corporate has been proceeded against.

Offences in relation to WHS entry permit holders
(sections 118–151)

It is an offence for a person to:

- refuse or fail to allow a WHS entry permit holder to exercise their rights 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 a WHS 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 under the *Industrial Relations Act 2016* (Qld) (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 or rectifying a suspected contravention (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 relevant union to:

- fail to notify the industrial registrar when the WHS entry permit holder resigns and leaves the union, or the WHS 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)
- » refuse or fail to comply with an inspector's notice to produce a document, give written answers to questions, or attend an interview to answer questions either in person or via audiovisual/audio link (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)

Some workplaces (e.g. major hazard facilities and major amusement parks) must 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, and 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, and 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)

Some types of work must only 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 608D WHS Regulation)
- the operator of a major amusement park must give the regulator safety case outline that complies with certain criteria (sections 608G-608J 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 608Q-608T 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 favourably 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.

Excluded entity means a group that is prohibited from representing or assisting a worker or HSR including:

- a union that is not a relevant union for the worker
- an association of employees or independent contractors that is not a union
- any other entity that is not a union, an association of employees or independent contractors that purports to represent the industrial interests of the worker or representative
- an entity that demands or receives a fee from another excluded entity for representing or purporting to represent the industrial interests of the workers or representative
- an officer, employee or agent of an excluded entity.

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 within 14 days after an application is received.

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 discriminatory conduct under section 105. Specifically, terminating or refusing to enter into a commercial arrangement with another person where the person:

- is a current, future, or past, health and safety representative or member of a health and safety committee
- exercises a power or performs a function as a work health and safety officer, health and safety officer or a member of a health and safety committee
- undertakes another role, exercises powers, performs functions, refrains from performing functions, assists with, takes action and raises issues under this Act.

Relevant Union means a union of which the worker is a member or is eligible for membership and whose rules entitle the union to represent the worker's industrial interests and includes:

- an association of employees or independent contractors, or both, registered as such under a state or territory industrial law
- 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).

Representative, for a worker, means the health and safety representative for the worker or a suitable entity authorised by the worker.

Suitable entity for representing or assisting a worker or their HSR means a relevant union or an authorised entity that is not an *excluded entity*.

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**.