



SUMMARY OF THE MODEL WORK HEALTH AND SAFETY BILL

The Model Work Health and Safety (WHS) Bill comes into effect in states and territories over the next twelve months. The intention is that the Commonwealth and each state and territory government will enact a workplace health and safety Bill to commence on 1 January 2012.

PART 1

AIM OF THE MODEL WHS BILL

cl 3

The main aim of the model WHS Bill is to secure the health and safety of workers and workplaces through the elimination or minimisation of risks, fair and effective representation, consultation, co-operation and issue resolution, encouraging employer organisations and unions to play a constructive role, provision of advice, information, education and training, and effective and appropriate compliance and enforcement measures, among other matters. It is also an object of the model WHS Bill that workers and others are to be given the **highest** level of protection from hazards and risks as is reasonably practicable.

PART 2

HEALTH AND SAFETY DUTIES

Principles applicable to duties under the model WHS Bill

cl 13 - 17

Duties under the model WHS Bill are non-transferable. A person may have more than one duty and more than one person can have the same duty. However, in that case, each person must discharge the duty to the extent the person has the capacity to influence and control the matter (or would have that capacity but for an agreement or arrangement purporting to limit or remove that capacity).

Duties imposed on a person to ensure health or safety ('health and safety duties') requires the person:

- to eliminate risks to health and safety, so far as is reasonably practicable, and
- if it is not reasonably practicable to eliminate risks to health and safety, to minimise those risks so far as is reasonably practicable.

Duties to be discharged so far as is 'reasonably practicable'

cl 18

Health and safety duties must be discharged so far as is 'reasonably practicable'.

The term 'reasonably practicable' means that which is, or was at a particular time, reasonably able to be done in relation to ensuring health or safety, taking into account and weighing up all relevant matters including:

- the likelihood of the hazard or risk occurring
- the seriousness of the risk
- what the person concerned knows, or ought reasonably to know, about the hazard or the risk, and ways of eliminating or minimising the risk, and
- the availability and suitability of ways to eliminate or minimise the risk.

After assessing these matters the cost of ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk, may also be taken into account.

Primary duty

cl 19

Persons conducting a business or undertaking (alone or with others, and whether or not for profit or gain) have work health and safety duties unless they conduct the business or undertaking solely as a worker in, or as an officer of, that business or undertaking.

The duty of a person conducting a business or undertaking must ensure, so far as is reasonably practicable, the health and safety of:

- workers engaged, or caused to be engaged by the person, and
- workers whose activities in carrying out work are influenced or directed by the person, while the workers are at work in the business or undertaking.

A person conducting a business or undertaking must also ensure, so far as is reasonably practicable, that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking.

This primary duty encompasses the provision and maintenance of a work environment without risks to health or safety, safe plant and structures and safe systems of work. It also includes the safe use, handling, storage and transport of plant, structures and substances, the provision of and access to adequate facilities for the welfare of workers, the provision of information, training, instruction or supervision, and monitoring of the health of workers and the conditions at the workplace.

Upstream duties

cll 20 - 26

Persons conducting a business or undertaking have additional duties if they:

- manage or control workplaces or fixtures, fittings or plant at workplaces, or
- design, manufacture, import or supply plant, substances or structures for workplaces, or install, construct or commission plant or structures for workplaces.

Officer duties

cl 27

Officers of persons conducting a business or undertaking that have a duty or obligation under the model WHS Bill must exercise 'due diligence' to ensure that the person conducting a business or undertaking complies with that duty or obligation.

Due diligence is defined to include taking reasonable steps in relation to:

- acquiring and keeping up to date knowledge of work health and safety matters,
- gaining an understanding of the nature of the operations and the hazards and risks associated with those operations,
- ensuring that the person conducting a business or undertaking has available and uses appropriate resources and processes to enable hazards associated with the operations to be identified and risks eliminated or minimised,
- ensuring that the person conducting a business or undertaking has appropriate processes for receiving and considering information regarding incidents, hazards and risks and responding to these in a timely way,
- ensuring that the person conducting a business or undertaking has and implements processes for complying with the body's duties and obligations, and
- verifying all of the above.

Officers of a person conducting a business or undertaking include all persons who are officers under the Corporations Act 2001 (Cth) (other than a partner in a partnership).

Workers duties

cl28

Workers must:

1. take reasonable care for their own health and safety,
2. take reasonable care that their acts or omissions do not adversely affect the health and safety of other persons, and
3. comply, so far as the worker is reasonably able with any reasonable instruction given by a person conducting a business or undertaking to allow the person conducting the business or undertaking to comply with the model WHS Bill, and
4. co-operate with any reasonable policy or procedure of the person conducting the business or undertaking which relates to work health or safety and that has been notified to workers.

Other person duties

cl 29

Other persons at the workplace have a duty to take reasonable care for their own health and safety and to take reasonable care that their acts or omissions do not adversely affect the health and safety of other persons. They also must comply, so far as they reasonably can, with any reasonable instruction given by the person conducting the business or undertaking to allow the person to comply with the model WHS Bill.

Penalty structure

cl 30 - 33

Three categories of penalties apply to breaches of the work health and safety duties:

- Category 1 - for reckless conduct that exposes an individual to a risk of death or serious injury or illness and is engaged in without reasonable excuse,
- Category 2 - failure to comply with a health and safety duty and exposing an individual to a risk of death or serious injury or illness, and
- Category 3 - failure to comply with a health and safety duty.

Maximum penalties are set according to the category of offence committed and the type of duty holder (i.e. individual, officer or body corporate) convicted of the offence.

No reverse onus

Prosecutors must prove all matters relating to non-compliance with duties of care, including whether the person conducting the business or undertaking failed to do what was 'reasonably practicable' to ensure the health and safety of workers (and, in relation to category 1 offences, whether the reckless conduct was engaged in without reasonable excuse).

Volunteer exemption

cl 34

Volunteers cannot be prosecuted for an offence unless they failed to comply with one of the duties that apply to workers or other persons at the workplace. This means that officers who are volunteers cannot be prosecuted for an offence against the officer duties under the model WHS Bill.

A volunteer is a person who acts on a voluntary basis, that is, without any kind of remuneration other than out-of-pocket expenses. Whether an individual is a volunteer for purposes of the model WHS Bill is a question of fact that will depend on the circumstances of each case.

Unincorporated associations

Unincorporated associations cannot be prosecuted for a breach of a duty imposed on the association under the model WHS Bill. However, officers of unincorporated associations may be liable for a failure to comply with the officer's duty and members of an unincorporated association may be prosecuted for a failure to comply with any duty owed as a worker or other person at the workplace.

Other exemptions

Ministers of a state, territory and the Commonwealth and elected members of local authorities cannot be prosecuted under the model WHS Bill.

PART 3

INCIDENT NOTIFICATION

cl 35 - 39

Workplace incidents involving the death of a person, serious illness or injury of a person and notifiable incidents (i.e. incidents that expose persons to serious risks at a workplace) must be reported to the regulator by the person who conducts the business or undertaking out of which the incident arose.

Persons with management or control of the workplace must ensure, so far as is reasonably practicable, that the site of the incident is not disturbed until an inspector arrives at the site or as otherwise directed by an inspector. There are exceptions to this duty including any action taken to assist an injured person.

This duty only applies 'so far as is reasonably practicable' because the person with management or control of a workplace will not always have complete control of that workplace or the people within it.

PART 4

AUTHORISATIONS

cl 40

The model WHS Bill establishes framework for authorisations that will be established under the model WHS Regulations (e.g. licences for high-risk work). The provisions in the model WHS Bill establish the offences framework.

PART 5

CONSULTATION, REPRESENTATION AND PARTICIPATION

Obligation to consult with other duty holders

cl 46

Duty holders with overlapping work health and safety duties under the model WHS Bill must, so far as is reasonable practicable, consult, co-operate and co-ordinate activities with each other.

Duty to consult workers

cl 47

Persons conducting a business or undertaking must, so far as is reasonably practicable, consult with workers who carry out work for the business or undertaking who are, or are likely to be, directly affected by a matter relating to health or safety at work. Consultation must be in accordance with any procedures agreed between the person conducting the business or undertaking and the workers.

The level of consultation should be proportionate to the circumstances, including the significance of the work health or safety issue. All relevant factors must be considered in determining the scope of the duty in a particular case, including the seriousness of the matter, the number of affected workers and how the matter affects individual workers.

More serious health or safety matters will attract more extensive consultation requirements. This is important to ensure that businesses are fully informed when making decisions about important health and safety matters.

Nature of consultation

cl 48

Consultation means:

- sharing relevant information
- giving workers a reasonable opportunity to express their views, raise issues and contribute to decision making
- taking workers' views into account, and
- advising workers of the outcome of the consultation in a timely manner.

If the workers are represented by a Health and Safety Representative, the consultation must involve that representative.

When consultation is required

cl 49

Consultation is required:

- when identifying hazards and assessing risks arising from work
- making decisions about ways to eliminate or minimise those risks
- making decisions about the adequacy of facilities for the welfare of workers
- proposing changes that may affect the health or safety of workers
- making decisions about the procedures for resolving health or safety issues, monitoring the health of workers or workplace conditions, information and training or consultation with workers, and
- and when carrying out any other activity prescribed by the model WHS Regulations.

Health and Safety Representatives

cll 50-74

The model WHS Bill provides for the appointment, powers and functions of Health and Safety Representatives.

Health and Safety Representatives represent work groups, being groups of workers within a business or undertaking. Provision is also made for Health and Safety Representatives to operate across multiple businesses or undertakings by agreement between all relevant parties.

Deputy Health and Safety Representatives

The model WHS Bill also provides for deputy Health and Safety Representatives to be elected in the same way that the Health and Safety Representatives are elected. Deputy Health and Safety Representatives only stand in for their Health and Safety Representative when that person is not available and generally have the same functions and powers.

Determination of work groups

cl 51

Health and Safety Representatives represent work groups, comprising workers who carry out work for the person conducting the business or undertaking. To conduct an election work groups need to be determined.

A work group is generally determined by negotiation and agreement between the person conducting the business or undertaking and the workers who will form the work group or their representatives. It may cover one or more workplaces.

Upon request being made for the election of Health and Safety Representatives, the person conducting the business or undertaking must take all reasonable steps to commence negotiations within 14 days.

Negotiations determine:

- the number and composition of work groups
- the number of Health and Safety Representatives and deputy Health and Safety Representatives
- the workplace or workplaces to which the work groups will apply, and
- the businesses or undertakings to which the work groups will apply.

If there is a failure of negotiations (as defined) any person who is or would be a party to the negotiations may ask an inspector to determine these matters. An inspector may only assist, however, in relation to negotiations for work groups covering more than one person conducting a business or undertaking.

The model WHS Regulations may provide for the variation of work groups

Election of Health and Safety Representatives

cl160-67

The workers in a work group may determine how an election of a Health and Safety Representative for the work group will be conducted, subject to any minimum requirements prescribed by the model WHS Regulations.

A majority of members may determine that the election will be conducted with the assistance of a union or other person or organisation.

The person conducting the business or undertaking must provide any resources, facilities and assistance that are reasonably necessary or are prescribed by the model WHS Regulations to enable the elections to be conducted.

Each member of the relevant work group is entitled to one vote in the elections.

Eligibility and term of office of Health and Safety Representatives

cl 64 and cl 64

A person is eligible to be elected as a Health and Safety Representative for a work group if he or she is a member of that work group and has not been disqualified from being a Health and Safety Representative.

Health and Safety Representatives are elected for a three year term although that ceases upon:

- resignation given by written notice
- the person ceasing to be a worker in the work group the person was elected to represent
- the person being disqualified, or
- the person being removed from office by a majority of the members of the work group in accordance with the model WHS Regulations.

Disqualification of Health and Safety Representatives

cl 65

A designated court or tribunal may disqualify a Health and Safety Representative if satisfied the representative exercised a power or performed a function for an improper purpose, or used or disclosed any information acquired as a Health and Safety Representative for an improper purpose.

An application for disqualification may be made by either a person that has been adversely affected by the alleged behaviour or the regulator.

Immunity of Health and Safety Representatives

cl 66

Health and Safety Representatives are not personally liable for anything done or omitted to be done in good faith in exercising a power or performing a function under the model WHS Bill, or in the reasonable belief that their actions were authorised under the model WHS Bill.

Powers and functions of Health and Safety Representatives

cl 68

Health and Safety Representatives are entitled to:

- represent work group members in relation to health and safety matters at work
- investigate complaints from work group members relating to work health and safety matters, and
- inquire into anything that appears to be a risk to the health or safety of work group members, arising from the conduct of the business or undertaking.

To do any of these things, Health and Safety Representatives may inspect the workplace or any part of the workplace at which work group members work:

- after giving the person conducting the business or undertaking reasonable notice, or
- immediately - if there has been an incident or any situation involving a serious risk to the health or safety of any person at the place.

Representation rights at interviews

Health and Safety Representatives are entitled to be present at any interviews concerning work health or safety between a work group member and the person conducting the business or undertaking or an inspector, providing the work group member consents.

If one or more workers are involved, then the Health and Safety Representative is entitled to be present if only one work group member consents.

Related entitlements

Health and Safety Representatives are also entitled to:

- accompany an inspector during an inspection of the workplace or part of the workplace at which a work group member works
- request that a health and safety committee be established
- receive any information about the work health or safety of work group members, providing that information does not identify particular workers, or affected workers consent to the disclosure, and
- whenever necessary—request the assistance of any person.

No duty or obligation to perform functions, exercise powers

cl 68(4)

The model WHS Bill clarifies that there is no kind of legal duty or obligation on Health and Safety Representatives to perform any of the functions, or exercise any of the powers, under the model WHS Bill.

Powers and functions generally limited to the particular work group

cl 69

Health and Safety Representatives are entitled to exercise their powers in relation to their work group members. However, if there is more than one work group for the business or undertaking, a Health and Safety Representative may step in to represent any of those work groups if:

- there is a serious risk to the health or safety emanating from an immediate or imminent exposure to a hazard that affects or may affect a member of that work group, or
- a member of another work group asks for the representative's assistance, and
- the Health and Safety Representatives for the work group are found, after reasonable inquiry, to be unavailable.

General obligations of persons conducting a business or undertaking to Health and Safety Representatives

cl 70

A person conducting a business or undertaking must allow Health and Safety Representatives to exercise their entitlements under the model WHS Bill and provide any resources, facilities and assistance that are reasonably necessary or prescribed by the model WHS Regulations to enable the representative to do so.

A person conducting a business or undertaking must also:

- consult, so far as is reasonably practicable, on work health or safety matters with Health and Safety Representatives for the business or undertaking
- confer with Health and Safety Representatives for the business or undertaking, whenever reasonably requested, for the purpose of ensuring the work health and safety of the representative's work group members
- provide Health and Safety Representatives for the business or undertaking with access to any available information the person has relating to work risks that affect work group members, and
- provide any other assistance that may be required by the model WHS Regulations.

Powers and performing functions of Health and Safety Representatives cl 70(2), (3)

Health and Safety Representatives are entitled to spend such paid time as is reasonably necessary to exercise their powers and perform their functions under the model WHS Bill.

Payment must be made at the rate that the Health and Safety Representative would receive for performing his or her normal duties during that period.

Exceptions from obligations to Health and Safety Representatives - assistants cl 71(2) – (6)

Persons conducting a business or undertaking are not required to pay for any external assistants that help their Health and Safety Representatives.

Despite the general entitlement to use assistants, a person conducting a business or undertaking may refuse a particular assistant access to the workplace if:

- the person has reasonable grounds to do so, or
- the assistant is a current or former permit holder under the model WHS Bill whose permit is suspended or has been revoked.

If access is refused on 'reasonable grounds' the affected Health and Safety Representative may ask for an inspector's assistance in resolving the matter.

Obligation to train Health and Safety Representatives cl 72

Health and Safety Representatives are entitled to attend a course of approved training of their choice, consistent with the model WHS Regulations. Payment for the training period must be made at the rate that the Health and Safety Representative would receive for performing his or her normal duties during that period.

After asking for training, the person conducting the business or undertaking must, within three months of the request being made, allow the Health and Safety Representative time off work to attend the course of training and pay the course fees and any other reasonable costs associated with course attendance.

If the parties cannot agree on the course (e.g. location), timing or reimbursement for reasonable costs within the required timeframe, then the matter may be referred to an inspector for determination.

The person conducting the business or undertaking must comply with any determination of the inspector.

Health and safety committees

cl 75 - 79

A health and safety committee is a workers' representative body for a business or undertaking or part thereof that meets at least once every three months or at any reasonable time at the request of at least half of the committee members, with a view to:

- facilitating co-operation in instigating, developing and carrying out measures designed to ensure the work health and safety of workers who carry out work for the business or undertaking
- assisting in developing standards, rules and procedures relating to health and safety for workers who carry out work for the business or undertaking, and
- doing anything else required by the model WHS Regulations or as agreed between the committee and the person conducting the business or undertaking.

The person conducting a business or undertaking can establish the committee on its own initiative, and must do so within two months after been asked to do so by:

- a Health and Safety Representative for the business or undertaking
- five or more workers who carry out work for the business or undertaking, or
- if required to do so by the model WHS Regulations.

The person conducting the business or undertaking must allow each committee member to spend such time as is reasonably necessary to attend meetings of the committee or to carry out functions as a committee member. Payment must be made at the rate that the member would receive for performing his or her normal duties during that period.

Issue resolution

cll 80 - 82

Parties to an issue must use the issued resolution process under the model WHS Bill if a work health or safety matter is not resolved after discussion between the parties. The relevant parties are the person conducting the relevant business or undertaking, the Health and Safety Representatives for affected workers, and if none—the affected workers or their representatives.

Parties to the issue are required to make reasonable efforts to achieve a timely, final and effective resolution of the issue in accordance with the relevant agreed procedure, or if there is no agreed procedure, the default procedure prescribed by the model WHS Regulations.

If the issue remains unresolved after reasonable efforts have been made, it may be referred to an inspector to assist in resolving the issue.

Right of worker to cease work

cl 84

Workers are entitled to cease work if they have reasonable concerns that to carry out the work would expose them to a serious risk to their health or safety, emanating from an immediate or imminent exposure to a hazard. This right is not affected by any issue resolution process that may be underway.

Health and Safety Representative may direct that unsafe work cease

cl 85

Health and Safety Representatives that have received the required training by the model WHS Bill may direct a work group member to cease unsafe work if they have a reasonable concern that to carry out the work would expose the worker to a serious risk, emanating from an immediate or imminent exposure to a hazard.

Before giving the direction, the Health and Safety Representative must consult with the person conducting the business or undertaking and attempt to resolve the issue using the issue resolution procedure under the model WHS Bill. This is not required, however, if the risk is so serious and immediate or imminent that would not be reasonable to consult before giving the direction.

Worker obligations upon ceasing work

cII 86 - 89

A worker who ceases unsafe work under the model WHS Bill must, as soon as possible, notify the person for whom they are carrying work they have ceased unsafe work. The worker must also remain available to carry out suitable alternative work.

To ensure payment during the stoppage, the worker must also carry out any suitable alternative work they are required to carry out at the same or another workplace if that work is safe and appropriate for the worker to carry out until normal duties can be resumed safely.

Provisional Improvement Notices

cII 90 - 102

Subject to certain conditions relating to consultation and training, Health and Safety Representatives may issue Provisional Improvement Notices if they reasonably believe that a person is contravening a provision of the model WHS Bill, or has contravened such a provision in circumstances that make it likely that the contravention will continue or be repeated.

PART 6

DISCRIMINATORY, COERCIVE AND MISLEADING CONDUCT

cII 104 - 155

It is an offence for any person to engage in discriminatory conduct for prohibited reasons. These reasons relate to a person's intention to or exercise of powers or functions under the WHS Bill.

The model WHS Bill also contains a series of provisions dealing with:

- a prohibition of authorising or assisting discriminatory conduct,
- a prohibition of coercion or inducement, for example taking action with the intent to coerce a person to exercise a power or perform functions under the model WHS Bill, and
- an offence of misrepresentation, for example making a false or misleading representation to someone about that person's right or obligations under the model WHS Bill.

These provisions overlap with and are similar to the general protections found in the Commonwealth Fair Work Act 2009.

Provisions in this part also provide for when criminal and civil proceedings may be brought for an offence against this Part, orders for damages or reinstatement and other matters relating to discriminatory conduct.

PART 7

WORKPLACE ENTRY BY ENTRY PERMIT HOLDERS

cl 116 - 151

The model WHS Bill allows unions to apply to the relevant authority for a Work Health and Safety entry permit to be issued to a person who is an official of that union. If an entry permit is issued, the entry permit holder may enter workplaces to:

- inquire into suspected contraventions of work health and safety laws affecting workers who are members, or eligible to be members of the permit holder's union, and whose interests the union is entitled to represent, and
- consult and advise such workers about work health and safety matters.

Permit holders are also entitled to exercise rights relating to inspection, consult with relevant workers and the person conducting the relevant business or undertaking, inspect and make copies of certain record or documents, and warn persons reasonably believed to be exposed to a serious risk emanating from an immediate or imminent exposure to a hazard.

When entering a workplace to inquire into a suspected contravention, an entry permit holder is not required to give prior notice. However, 24 hours notice is required to consult and advise and to request documents other than those related to the suspected contravention that are employee records.

The provisions in Part 7 have generally been drafted to be consistent with the right of entry provisions under the Fair Work Act 2009.

PART 8

THE REGULATOR

cl 152

The model WHS Bill establishes the functions of the regulator (in the Commonwealth and each state and territory jurisdiction). These are wide ranging and relate to:

- advising and making recommendations to the relevant Minister and reporting on the operation and effectiveness of the model WHS Bill,
- monitoring and enforcing compliance with the model WHS Bill,
- providing advice and information on work health and safety to duty holders and the community, and collecting, analysing and publishing statistics.

They also include fostering a co-operative, consultative relationship between duty holders and the persons to whom they owe duties and their representatives, promoting and supporting education and training, engaging in, promoting and co-ordinating the sharing of information to achieve the objects of the model WHS Bill (including other regulators), and any other function conferred by the model WHS Bill.

Powers of regulators

cl 153

The model WHS Bill establishes broad powers enabling regulators to do all things necessary or convenient to be done for or in connection with the performance of its functions.

Powers of regulator to obtain information

cl 155

Regulators have broad powers to obtain information from persons they have reasonable grounds to believe are capable of giving information, producing documents or giving evidence in relation to a possible contravention of the model WHS Bill, or that will assist the regulator to monitor or enforce compliance with the model WHS Bill.

PART 9

SECURING COMPLIANCE

cII 156 - 190

Inspectors may enter workplaces and exercise a broad range of powers upon entry to monitor and secure compliance with the model WHS Bill and model WHS Regulations.

Inspectors have prescribed powers relating to entry and assistance, search warrants, requiring production of documents and answers to questions, obtaining and retaining documents that are relevant to the exercise of their powers, seizing any thing the inspector reasonably believes is evidence of an offence against the model WHS Bill, taking and removing for examination, analysis or testing a sample of any substance or thing, seizing dangerous workplaces and things, and other related matters.

Inspectors also have a role in:

- assisting with or determining particular disputes that may arise under the model WHS Bill (e.g. in relation to work groups or Health and Safety Representatives)
- reviewing disputed Provisional Improvement Notices
- requiring compliance with the model WHS Bill through the issuing of notices
- investigating contraventions of the model WHS Bill, and
- assisting in the prosecution of offences.

It is an offence to hinder or obstruct, impersonate, assault, threaten or intimidate an inspector.

PART 10

SECURING COMPLIANCE

Inspectors may issue: cII 191 - 210

- improvement notices—if they reasonably believe that a person is contravening a provision of the model WHS Bill or has contravened a provision in circumstances that make it likely that the contravention will continue or be repeated,
- prohibition notices—if they reasonably believe that an activity is occurring at a workplace that involves or will involve a serious risk to the health or safety of a person emanating from an immediate or imminent exposure to a hazard. Prohibition notices may also be issued if there is the potential for such an activity to occur, and
- non-disturbance notices to preserve a work site—if they reasonably believe that it is necessary to do so to facilitate their compliance powers.

cII 211 - 213

Provision is made for remedial action by the regulator if a person issued with a prohibition notice fails to take reasonable steps to comply with the notice.

cII 214 - 215

The regulator may also apply to a court for an injunction compelling a person to comply with any kind of notice issued by an inspector.

PART 11

ENFORCEABLE UNDERTAKINGS

cII 216 - 222

The regulator may accept an enforceable undertaking ('WHS undertaking') given by a person in connection with a matter relating to a contravention or alleged contravention of the model WHS Bill by the person (except for a contravention or alleged contravention that is a Category 1 offence). The model WHS Bill establishes requirements in relation to the regulators' and duty holders' role and responsibilities in relation to a WHS undertaking.

It is an offence to contravene a WHS undertaking made by that person while it is in effect, and the regulator may seek the imposition of a fine, orders directing that the person comply with the WHS undertaking or orders discharging the undertaking. The regulator may also seek to prosecute the underlying offence if the WHS undertaking was not completely discharged.

PART 12

REVIEW OF DECISIONS

cII 223 - 229

The model WHS Bill lists reviewable decisions and establishes procedures for internal review by the regulator and arrangements for external review by a prescribed body. In general, reviewable decisions that are made by:

- inspectors—are reviewable by the regulator internally at first instance, and then may go on to external review, and
- the regulator—go straight to external review.

The model WHS Bill establishes procedures reviews, including stays of reviewable decisions.

An application for review automatically stays the operation of the decision under review, except in relation to prohibition or non-disturbance notices. The decision to issue a prohibition or non-disturbance notice may be stayed upon application or on the reviewer's initiative.

A stay that is in place for an internal review continues to have effect until an application is made for external review, or until time form making the application for external review expires.

PART 13
LEGAL PROCEEDINGS

Who may prosecute

cl 230

Prosecutions for offences against the Bill may only be brought by the regulator, an inspector authorised in writing by the regulator or the Department of Public Prosecutions in the relevant jurisdiction.

Limitation periods

cl 232

Proceedings may only be brought within two years after the offence first comes to the notice of the regulator or within one year after a finding in a coronial inquiry or an official inquiry that the offence has occurred.

Proceedings for a Category 1 offence may also be brought after the end of the applicable limitation period if fresh evidence relevant to the offence is discovered and the court is satisfied the evidence could not reasonably have been discovered within the relevant limitation period.

Proceedings may be brought within six months after an enforceable undertaking is contravened, it comes to the notice of the regulator that the undertaking has been contravened or the regulator has agreed to the withdrawal of the undertaking.

Procedure if no prosecution is brought

cl 231

There are procedures for a person to request and receive information if the person reasonably considers that an act, matter or thing constitutes a Category 1 or 2 offence and no prosecution has been brought in respect of the matter (after six months but not later than 12 months after the occurrence). In those circumstances the person may in writing request that a prosecution be brought. The model WHS Bill then requires the regulator to respond to the request within three months.

Alternative sentencing options

cl 234 - 242

The model WHS Bill sets out a broad range of alternative sentencing options including adverse publicity orders, orders for restoration to remedy matters, community service orders, release on the giving of a court ordered enforceable undertaking, injunctions and training orders.

PART 14
GENERAL

cII 268 - 276

The model WHS Bill collates a number of miscellaneous provisions in Part 14, including provisions dealing with the offence of giving false or misleading information, legal professional privilege, immunity from liability for inspectors and confidentiality of information.

The model WHS Bill provides for Codes of Practice to be approved by the relevant Minister.

In a proceeding for an offence against the model WHS Bill, the court may have regard to an approved Code of Practice as evidence of whether or not a duty or obligation under this Bill has been complied with. Specifically, the court may have regard to a code of practice as evidence of what is known about a particular hazard or risk, risk assessment or risk control to which the code relates, and may rely on that code in determining what is reasonably practicable in the circumstances to which the code relates. However, failure to comply with a Code of Practice does not of itself give rise to any civil or criminal liability.

JURISDICTIONAL NOTES

Jurisdictional notes allow local drafters in each jurisdiction to make a small number of specified technical amendments to the model WHS Bill to prepare for its introduction and implementation.

These technical amendments are designed to ensure the workability of the model provisions in each jurisdiction without affecting harmonisation. More specifically the jurisdictional notes are required to:

- accommodate local drafting protocols
- clarify interaction of the model WHS Bill with local laws and the work health and safety laws of other jurisdictions
- remove duplication of the with local laws
- clarify the scope of the model WHS Bill within each jurisdiction
- establish appropriate institutional arrangements, and
- enable jurisdictions to adopt the model provisions dealing with dangerous goods and high risk plant.