

Understanding the *Work Health and Safety (National Uniform Legislation) Act 2011*

Part 14 – General

Part 14 collates a number of miscellaneous provisions which are similar to the repealed Workplace Health and Safety Act 2007.

Issues Covered

The issues discussed are:

- Provisions relating to a variety of matters
- Codes of practice
- Regulation-making power

Key Provisions

Division 1 General Provisions

This division includes sections 268 to 273 and contains provisions relating to:

- the giving of false or misleading information
- legal professional privilege
- immunity from liability
- confidentiality of information
- a prohibition on contracting out
- a prohibition on levying workers for anything in relation to work health and safety.

Offence to give false or misleading information (s.268)

It is an offence for a person to give information in complying, or purportedly complying, with the Work Health and Safety (National Uniform Legislation) Act 2011 (the Act), that the person knows to be false or misleading in a material particular, or that omits any matter or thing without which the information is misleading.

It is an offence for a person to produce a document in complying or purportedly complying with the Act that the person knows to be false or misleading in a material particular without:

- indicating how it is false or misleading and, if practicable, providing the correct information; or
- accompanying the document with a written statement signed by the person or; in the case of a body corporate, by a competent officer of the body corporate-
 - i. stating that the document is, to the knowledge of the first-mentioned person, false or misleading in a material particular; or
 - ii. setting out, or referring to, the material particular in which the document is, to the knowledge of the first-mentioned person, false or misleading.

Act does not affect legal professional privilege (s.269)

Nothing in the Act requires a person to produce a document that would disclose information, or otherwise provide information, that is the subject of legal professional privilege.

Immunity from liability (s.270)

Inspectors have a crucial role to play in the promotion of work health and safety and in eliminating or minimising serious risks to health and safety. They may be required to exercise judgment, make decisions and exercise powers with limited information and in urgent circumstances. Therefore, it is important that they, and others engaged in the administration of the Act, are not deterred from exercising their skill and judgment due to fear of personal legal liability.

Inspectors, and others engaged in the administration of the Act, are not personally liable for acts or omissions, so long as those acts or omissions are done in good faith and in the execution or purported execution of their powers and functions. This protection covers civil liability only.

Confidentiality of information (s.271)

A person who has obtained information or gains access to a document in exercising any power or function under the Act (other than under part 7), must not do any of the following:

- disclose to anyone else:
 - (i) the information; or
 - (ii) 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.

The above does not apply to the disclosure of information, or the giving of access to a document or the use of information or a document:

- about a person, with the person's consent; or
- that is necessary for the exercise of a power or function under the Act; or
- that is made or given by the regulator or a person authorised by the regulator if the regulator reasonably believes the disclosure, access or use-
 - is necessary for administering, or monitoring or enforcing compliance with, the Act; or
 - is necessary for the administration or enforcement of another Act prescribed under a regulation; or
 - is necessary for the administration or enforcement of another Act or law, if the disclosure, access or use is necessary to lessen or prevent a serious risk to public health or safety; or
 - is necessary for the recognition of authorisations under a corresponding WHS law; or
 - is required for the exercise of a power or function under a corresponding WHS law.
- that is required by any court, tribunal, authority or person having lawful authority to require the production of documents or the answering of questions; or
- that is required or authorised under a law; or
- to a Minister.

It is an offence for a person to intentionally disclose to another person, the name of an individual who has made a complaint against that other person, unless the disclosure is made with the consent of the complainant or is required by law.

No contracting out (s.272)

Duties of care and obligations, or any part of the Act for that matter, cannot be delegated. Therefore a term of any agreement or contract that purports to exclude, limit or modify the operation of the Act, or any duty owed under this Act, or to transfer to another person any duty owed under this Act, is void.

Person not to levy workers (s.273)

It is an offence for a PCBU to impose a levy or charge on a worker, or permit a levy or charge to be imposed on a worker, for anything done or provided in relation to work health and safety.

Division 2 Codes of Practice

Approved codes of practice (s.274)

Codes of practice provide practical guidance to assist duty holders to meet the requirements of the Act. A code of practice applies to anyone who has a duty of care in the circumstances described in the code. In most cases, following an approved code of practice would achieve compliance with the health and safety duties in the Act, in relation to the subject matter of the code.

Codes of practice are approved, varied or revoked, by the Minister, but only if they have been developed by a process that involved consultation between the Governments of the Commonwealth and each State and Territory; unions and employer organisations.

The regulator must ensure that members of the public are able to inspect, at the office of the regulator during normal business hours, a copy of each code of practice that is currently approved and each document applied, adopted or incorporated by a code of practice, free of charge.

Use of codes of practice in proceedings (s.275)

A code of practice is admissible in proceedings as evidence of whether or not a duty or obligation under the Act has been complied with.

The courts can use a code of practice as evidence of what is known about a hazard or risk, risk assessment or risk control, and rely on the code in determining what is reasonably practicable in the circumstances to which the code relates.

A person can also introduce other evidence to support their claim of compliance with the Act that is different from the code but provides a standard of work health and safety that is equal to, or higher than the standard required by the code of practice.

Division 3 Regulation Making Powers

Division 3 includes section 276.

The Governor in Council may make regulations under the Act. A regulation may make provision for any matter states in schedule 3 or otherwise related to work health and safety.

A Regulation may:

- allow the regulator to provide exemptions from complying with any of the regulations on the terms and conditions (if any) prescribed or, if the regulations allow, on the terms and conditions (if any) determined by the regulator; or
- prescribe fees for doing any act or providing any service for the purposes of the Act; or
- prescribe a penalty for any contravention of the regulations not exceeding 300 penalty units.