Work Health and Safety Act 2011 [extracts]

Part 1—Preliminary

2 Commencement

This Act commences on 1 January 2012.

Division 3—Interpretation

Subdivision 1—Definitions

4 Definitions

In this Act:

…

***health*** means physical and psychological health.

8 Meaning of *workplace*

(1) A ***workplace*** is a place where work is carried out for a business or undertaking and includes any place where a worker goes, or is likely to be, while at work.

(2) In this section, ***place*** includes:

(a) a vehicle, vessel, aircraft or other mobile structure; and

(b) any waters and any installation on land, on the bed of any waters or floating on any waters.

Subdivision 2—Other important terms

10 Act binds the Commonwealth

(1) This Act binds the Commonwealth.

(2) The Commonwealth is liable for an offence against this Act.

12F Interaction with Commonwealth criminal law

…

(3) Section 15.1 of the *Criminal Code* (extended geographical jurisdiction—category A) applies to an offence against this Act.

Part 2—Health and safety duties

Division 1—Introductory

Subdivision 1—Principles that apply to duties

14 Duties not transferrable

A duty cannot be transferred to another person.

16 More than 1 person can have a duty

(1) More than 1 person can concurrently have the same duty.

(2) Each duty holder must comply with that duty to the standard required by this Act even if another duty holder has the same duty.

(3) If more than 1 person has a duty for the same matter, each person:

(a) retains responsibility for the person’s duty in relation to the matter; and

(b) must discharge the person’s duty to the extent to which the person has the capacity to influence and control the matter … .

17 Management of risks

A duty imposed on a person to ensure health and safety requires the person:

(a) to eliminate risks to health and safety, so far as is reasonably practicable; and

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

Subdivision 2—What is reasonably practicable

18 What is *reasonably practicable* in ensuring health and safety

In this Act, ***reasonably practicable***, in relation to a duty to ensure health and safety, means that which is, or was at a particular time, reasonably able to be done in relation to ensuring health and safety, taking into account and weighing up all relevant matters including:

(a) the likelihood of the hazard or the risk concerned occurring; and

(b) the degree of harm that might result from the hazard or the risk; and

(c) what the person concerned knows, or ought reasonably to know, about:

(i) the hazard or the risk; and

(ii) ways of eliminating or minimising the risk; and

(d) the availability and suitability of ways to eliminate or minimise the risk; and

(e) after assessing the extent of the risk and the available ways of eliminating or minimising the risk, the cost associated with available ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk.

NB: for conciseness, the acronym “PCBU” below replaces “person conducting a business or undertaking”.

Division 2—Primary duty of care

19 Primary duty of care

(1) A [PCBU] must ensure, so far as is reasonably practicable, the health and safety of:

(a) workers engaged, or caused to be engaged by the person; …

while the workers are at work in the business or undertaking.

(2) A [PCBU] must 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.

(3) Without limiting subsections (1) and (2), a [PCBU] must ensure, so far as is reasonably practicable:

…

(f) the provision of any information, training, instruction or supervision that is necessary to protect all persons from risks to their health and safety arising from work carried out as part of the conduct of the business or undertaking; …

Division 3—Further duties of [PCBUs]

20 Duty of [PCBUs] involving management or control of workplaces

(1) In this section, ***person with management or control of a workplace*** means a [PCBU] to the extent that the business or undertaking involves the management or control, in whole or in part, of the workplace …

(2) The person 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 are without risks to the health and safety of any person.

Division 4—Duty of officers, workers and other persons

27 Duty of officers

1. If a [PCBU] has a duty or obligation under this Act, an officer of the [PCBU] must exercise due diligence to ensure that the [PCBU] complies with that duty or obligation.

…

(5) In this section, ***due diligence*** includes taking reasonable steps:

(a) to acquire and keep up‑to‑date knowledge of work health and safety matters; and

(b) to gain an understanding of the nature of the operations of the business or undertaking of the [PCBU] and generally of the hazards and risks associated with those operations; and

(c) to ensure that the [PCBU] has available for use, and uses, appropriate resources and processes to eliminate or minimise risks to health and safety from work carried out as part of the conduct of the business or undertaking; and

(d) to ensure that the [PCBU] has appropriate processes for receiving and considering information regarding incidents, hazards and risks and responding in a timely way to that information; and

(e) to ensure that the [PCBU] has, and implements, processes for complying with any duty or obligation of the [PCBU] under this Act; and

(f) to verify the provision and use of the resources and processes referred to in paragraphs (c) to (e).

Examples: For the purposes of paragraph (e), the duties or obligations under this Act of a [PCBU] may include:

(a) reporting notifiable incidents;

(b) consulting with workers;

(c) ensuring compliance with notices issued under this Act;

(d) ensuring the provision of training and instruction to workers about work health and safety;

(e) ensuring that health and safety representatives receive their entitlements to training.

28 Duties of workers

While at work, a worker must:

(a) take reasonable care for his or her own health and safety; and

(b) take reasonable care that his or her acts or omissions do not adversely affect the health and safety of other persons; and

(c) comply, so far as the worker is reasonably able, with any reasonable instruction that is given by the [PCBU] to allow the person to comply with this Act; and

(d) co‑operate with any reasonable policy or procedure of the [PCBU] relating to health or safety at the workplace that has been notified to workers.

Division 5—Offences and penalties

30 Health and safety duty

In this Division, ***health and safety duty*** means a duty imposed under Division 2, 3 or 4 of this Part.

31 Reckless conduct—Category 1

(1) A person commits a Category 1 offence if:

(a) the person has a health and safety duty; and

(b) the person, without reasonable excuse, engages in conduct that exposes an individual to whom that duty is owed to a risk of death or serious injury or illness; and

(c) the person is reckless as to the risk to an individual of death or serious injury or illness.

Penalty:

(a) In the case of an offence committed by an individual (other than as a [PCBU] or as an officer of a [PCBU])—$300 000 or 5 years imprisonment or both.

(b) In the case of an offence committed by an individual as [PCBU] or as an officer of a [PCBU]—$600 000 or 5 years imprisonment or both.

(c) In the case of an offence committed by a body corporate [see s 245]—$3 000 000.

(2) The prosecution bears the burden of proving that the conduct was engaged in without reasonable excuse.

32 Failure to comply with health and safety duty—Category 2

A person commits a Category 2 offence if:

(a) the person has a health and safety duty; and

(b) the person fails to comply with that duty; and

(c) the failure exposes an individual to a risk of death or serious injury or illness.

Penalty:

(a) In the case of an offence committed by an individual (other than as a [PCBU] or as an officer of a [PCBU])—$150 000.

(b) In the case of an offence committed by an individual as a [PCBU] or as an officer of a [PCBU]—$300 000.

(c) In the case of an offence committed by a body corporate [see s 245]—$1 500 000.

Part 10—Enforcement measures

Division 1—Improvement notices

191 Issue of improvement notices

(1) This section applies if [a Comcare] inspector reasonably believes that a person:

(a) is contravening a provision of this Act; or

(b) has contravened a provision in circumstances that make it likely that the contravention will continue or be repeated.

(2) The inspector may issue an improvement notice requiring the person to:

(a) remedy the contravention; or

(b) prevent a likely contravention from occurring; or

(c) remedy the things or operations causing the contravention or likely contravention.

…

Division 2—Prohibition notices

195 Power to issue prohibition notice

(1) This section applies if an inspector reasonably believes that:

(a) 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; or

(b) an activity may occur at a workplace that, if it occurs, will involve a serious risk to the health or safety of a person emanating from an immediate or imminent exposure to a hazard.

(2) The inspector may give a person who has control over the activity a direction prohibiting the carrying on of the activity, or the carrying on of the activity in a specified way, until an inspector is satisfied that the matters that give or will give rise to the risk have been remedied.

(3) The direction may be given orally, but must be confirmed by written notice (a ***prohibition notice***) issued to the person as soon as practicable.

Part 13—Legal proceedings

Division 1—General matters

231 Procedure if prosecution is not brought

(1) If:

(a) a person reasonably considers that the occurrence of an act, matter or thing constitutes a Category 1 offence or a Category 2 offence; and

(b) no prosecution has been brought in relation to the occurrence of the act, matter or thing after 6 months but not later than 12 months after that occurrence;

the person may make a written request to the regulator that a prosecution be brought.

232 Limitation period for prosecutions

(1) Proceedings for an offence against this Act may be brought … :

(a) within 2 years after the offence first comes to the notice of the regulator;

Division 5—The Commonwealth

245 Offences and the Commonwealth

1. If the Commonwealth is guilty of an offence against this Act, the penalty to be imposed on the Commonwealth is the penalty applicable to a body corporate.

247 Officers

1. A person who makes, or participates in making, decisions that affect the whole, or a substantial part, of a business or undertaking of the Commonwealth is taken to be an officer of the Commonwealth for the purposes of this Act.

248 Responsible agency for the Commonwealth

1. A[n] … improvement notice …. [and a] prohibition notice … to be given to or served on the Commonwealth under this Act may be given to or served on the responsible agency.

…

(3) If proceedings are brought against the Commonwealth for an offence against this Act or in relation to a contravention of this Act, the responsible agency in relation to the offence or contravention may be specified in any document initiating, or relating to, the proceedings.

Part 14—General

Division 1—General provisions

272 No contracting out

A term of any agreement or contract that purports to exclude, limit or modify the operation of this Act or any duty owed under this Act or to transfer to another person any duty owed under this Act is void.