

PART 1 — PRELIMINARY

DIVISION 1 — INTRODUCTION

[20,000] Citation

1 This Act may be cited as the Work Health and Safety Act 2010.

Note See the jurisdictional note in the Appendix.

Editor's note: For variations to the Model legislation for each jurisdiction refer to the entries as set out below.

Federal — s 1 of the Federal WHS legislation.

NSW — s 1 of the NSW WHS legislation.

QLD — s 1 of the QLD WHS legislation.

SA — s 1 of the SA WHS legislation.

TAS — s 1 of the TAS WHS legislation.

ACT — s 1 of the ACT WHS legislation.

[20,005] Commencement

2 This Act commences on 1 January 2012.

Note See the jurisdictional note in the Appendix.

Editor's note: For variations to the Model legislation for each jurisdiction refer to the entries as set out below.

QLD — s 2 of the QLD WHS legislation.

SA — s 2 of the SA WHS legislation.

TAS — s 2 of the TAS WHS legislation.

ACT — s 2 of the ACT WHS legislation.

DIVISION 2 — OBJECT

[20,010] Object

3 (1) The main object of this Act is to provide for a balanced and nationally consistent framework to secure the health and safety of workers and workplaces by:

(a) protecting workers and other persons against harm to their health, safety and welfare through the elimination or minimisation of risks arising from work [or from specified types of substances or plant]; and

Note See the jurisdictional note in the Appendix.

(b) providing for fair and effective workplace representation, consultation, co-operation and issue resolution in relation to work health and safety; and

(c) encouraging unions and employer organisations to take a constructive role in promoting improvements in work health and safety practices, and assisting persons conducting businesses or undertakings and workers to achieve a healthier and safer working environment; and

(d) promoting the provision of advice, information, education and training in relation to work health and safety; and

(e) securing compliance with this Act through effective and appropriate compliance and enforcement measures; and

(f) ensuring appropriate scrutiny and review of actions taken by persons exercising powers and performing functions under this Act; and

(g) providing a framework for continuous improvement and progressively higher standards of work health and safety; and

(h) maintaining and strengthening the national harmonisation of laws relating to work health and safety and to facilitate a consistent national approach to work health and safety in this jurisdiction.

(2) In furthering subsection (1)(a), regard must be had to the principle that workers and other persons should be given the highest level of protection against harm to their health, safety and welfare from hazards and risks arising from work [or from specified types of substances or plant] as is reasonably practicable.

Note See the jurisdictional note in the Appendix.

Editor's note: For variations to the Model legislation for each jurisdiction refer to the entries as set out below.

Federal — s 3 of the Federal WHS legislation.

NSW — s 3 of the NSW WHS legislation.

QLD — s 3 of the QLD WHS legislation.

ACT — s 3 of the ACT WHS legislation.

COMMENTARY TO SECTION 3

Main object	[20,010.5]
Objects assist in construction of Act	[20,010.10]
Highest level of protection	[20,010.15]

[20,010.5] Main object The main object of the Act is “to provide for a balanced and nationally consistent framework to secure the health and safety of workers and workplaces”. This is to be accomplished by achieving the eight subsidiary objects in s 3(1)(a)–(h).

[20,010.10] Objects assist in construction of Act It is an accepted principle of statutory construction in Australia that, in interpreting legislation, courts should give effect to the intention of parliament: *Project Blue Sky Inc v Australia Broadcasting Authority* (1998) 194 CLR 355 at 381; 153 ALR 490; [1998] HCA 28; BC9801389. In construing Occupational Health and Safety (OHS) legislation, courts have referred to the importance of objects’ provisions in achieving this goal: *Chugg v Pacific Dunlop Ltd* (1990) 170 CLR 249 at 261; 95 ALR 481; 50 A Crim R 85; BC9002934; *Powercoal Pty Ltd v IRC (NSW)* (2005) 64 NSWLR 406; 226 FLR 244; [2005] NSWCA 345; BC200507643 at [116]; *Stratton v Van Driel Ltd* (1997) 87 IR 151; [1998] VSC 75; BC9805001 at [15]; *R v ACR Roofing Pty Ltd* (2004) 11 VR 187; 142 IR 157; [2004] VSCA 215; BC200408208 at [43]; *Victorian WorkCover Authority v Horsham Rural City Council* [2008] VSC 404; BC200808807 at [21]–[24]; *Simpson Design Associates Pty Ltd v Industrial Court of NSW* [2011] NSWCA 316; BC201107718 at [111] and [115].

[20,010.15] Highest level of protection Section 3(2) directs attention to the “principle” of the “highest level of protection” that is reasonably practicable. The second report of the National Review (see: R Stewart-Crompton, S Mayman and B Sherrif, *National Review into Model Occupational Health and Safety Laws, Second Report, January 2009*, <http://www.nationalohsreview.gov.au/>), at 22.36, favoured a statement of principles in addition to a statement of objects. This has been the approach in Victoria (see Occupational Health and Safety Act 2004 (Vic) s 4). In *Victorian WorkCover Authority v Horsham Rural City Council* [2008] VSC 404; BC200808807 at [23], the Supreme Court of Victoria (Hollingworth J), described the principles in s 4 of the Victorian Act as confirming “the very important public policy underlying the Act” However, the only “principle” of construction that appears in the Act is that set out in s 3(2).

DIVISION 3 — INTERPRETATION

Subdivision 1 — Definitions

[20,015] Definitions

4 In this Act:

approved code of practice means a code of practice approved under Part 14.

authorised, in Part 4 — see section 40.

authorising authority means:

Note See the jurisdictional note in the Appendix.

Category 1 offence — see section 31.

Category 2 offence — see section 32.

Category 3 offence — see section 33.

compliance powers means the functions and powers conferred on an inspector under this Act.

condition includes limitation and restriction.

construct includes assemble, erect, reconstruct, reassemble and re-erect.

corresponding regulator means the holder of a public office, or a public authority, of the Commonwealth, or of a State, who or which is responsible for administering a corresponding WHS law.

corresponding WHS law means:

Note See the jurisdictional note in the Appendix.

court means:

Note See the jurisdictional note in the Appendix.

dangerous incident, in Part 3 — see section 37

demolition includes deconstruction.

design, in relation to plant, a substance or a structure includes:

- (a) design of part of the plant, substance or structure; and
- (b) redesign or modify a design.

disclose, in relation to information, includes divulge or communicate to any person or publish.

discriminatory conduct, in Part 6 — see section 105.

document includes record.

employee record, in relation to an employee, has the same meaning as it has in the Privacy Act 1988 of the Commonwealth.

employer organisation means an organisation of employers.

engage in conduct means doing an act or omitting to do an act.

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

handling includes transport.

health means physical and psychological health.

health and safety duty — see section 30.

health and safety representative, in relation to a worker, means the health and safety representative elected under Part 5 for the work group of which the worker is a member.

import means to bring into the jurisdiction from outside Australia.

inspector means an inspector appointed under Part 9.

internal reviewer means:

- (a) the regulator; or

(b) a person appointed by the regulator under section 225.

local authority means:

Note See the jurisdictional note in the Appendix.

medical treatment means treatment by a medical practitioner registered under [the relevant registration Act].

Note See the jurisdictional note in the Appendix.

notifiable incident — see section 35.

officer means:

- (a) an officer within the meaning of section 9 of the Corporations Act 2001 of the Commonwealth other than a partner in a partnership; or
- (b) an officer of the Crown within the meaning of section 247; or
- (c) an officer of a public authority within the meaning of section 252, other than an elected member of a local authority acting in that capacity.

official of a union, in Part 7 — see section 116.

person conducting a business or undertaking — see section 5.

personal information has the same meaning as it has in the Privacy Act 1988 of the Commonwealth.

plant includes:

- (a) any machinery, equipment, appliance, container, implement and tool; and
- (b) any component of any of those things; and
- (c) anything fitted or connected to any of those things.

prohibited reason, in Part 6 — see section 106.

public authority means:

Note See the jurisdictional note in the Appendix.

reasonably practicable, in relation to a duty to ensure health and safety — see section 18.

regulator means:

Note See the jurisdictional note in the Appendix.

relevant person conducting a business or undertaking, in Part 7 — see section 116.

relevant State or Territory industrial law, in Part 7 — see section 116.

relevant union, in Part 7 — see section 116.

relevant worker, in Part 7 — see section 116

representative, in relation to a worker, means:

- (a) the health and safety representative for the worker; or
- (b) a union representing the worker; or
- (c) any other person the worker authorises to represent him or her.

serious injury or illness, in Part 3 — see section 36.

State includes Territory.

State or Territory industrial law has the same meaning as it has in the Fair Work Act.

structure means anything that is constructed, whether fixed or moveable, temporary or permanent, and includes:

- (a) buildings, masts, towers, framework, pipelines, transport infrastructure and underground works (shafts or tunnels); and
- (b) any component of a structure; and
- (c) part of a structure.

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

supply — see section 6.

this Act includes the regulations.

Note See the jurisdictional note in the Appendix.

union means:

- (a) an employee organisation that is registered, or taken to be registered, under the Fair Work (Registered Organisations) Act 2009 of the Commonwealth; or
- (b) an association of employees or independent contractors, or both, that is registered or recognised as such an association (however described) under a State or Territory industrial law.

volunteer means a person who is acting on a voluntary basis (irrespective of whether the person receives out-of-pocket expenses).

WHS entry permit means a WHS entry permit issued under Part 7.

WHS entry permit holder means a person who holds a WHS entry permit.

WHS undertaking means an undertaking given under section 216(1).

work group means a work group determined under Part 5.

worker — see section 7.

workplace — see section 8.

Editor's note: For variations to the Model legislation for each jurisdiction refer to the entries as set out below.

Federal — s 4 of the Federal WHS legislation.

NSW — s 4 of the NSW WHS legislation.

QLD — s 4 of the QLD WHS legislation.

SA — s 4 of the SA WHS legislation.

TAS — s 4 of the TAS WHS legislation.

ACT — s 4 of the ACT WHS legislation.

Subdivision 2 — Other important terms

[20,020] Meaning of person conducting a business or undertaking

- 5 (1) For the purposes of this Act, a person conducts a business or undertaking:
- (a) whether the person conducts the business or undertaking alone or with others; and
 - (b) whether or not the business or undertaking is conducted for profit or gain.
- (2) A business or undertaking conducted by a person includes a business or undertaking conducted by a partnership or an unincorporated association.
- (3) If a business or undertaking is conducted by a partnership (other than an incorporated partnership), a reference in this Act to a person conducting the business or undertaking is to be read as a reference to each partner in the partnership.
- (4) A person does not conduct a business or undertaking to the extent that the person is engaged solely as a worker in, or as an officer of, that business or undertaking.
- (5) An elected member of a local authority does not in that capacity conduct a business or undertaking.

(6) The regulations may specify the circumstances in which a person may be taken not to be a person who conducts a business or undertaking for the purposes of this Act or any provision of this Act.

(7) A volunteer association does not conduct a business or undertaking for the purposes of this Act.

(8) In this section, **volunteer association** means a group of volunteers working together for 1 or more community purposes where none of the volunteers, whether alone or jointly with any other volunteers, employs any person to carry out work for the volunteer association.

Editor's note: For variations to the Model legislation for each jurisdiction refer to the entries as set out below.

QLD — s 5 of the QLD WHS legislation.

ACT — s 5 of the ACT WHS legislation.

COMMENTARY TO SECTION 5

A new concept in Occupational Health and Safety law	[20,020.5]
Person	[20,020.10]
Business or undertaking	[20,020.15]
Business	[20,020.20]
Undertaking	[20,020.25]
Volunteer associations	[20,020.30]
Workers	[20,020.35]
Officers	[20,020.40]
Local authority	[20,020.45]

[20,020.5] A new concept in Occupational Health and Safety law Historically, Occupational Health and Safety (OHS) laws have relied upon the traditional employer-employee relationship as the touchstone of liability. An extended definition of “employee” has been used to broaden the reach of some Acts: see Occupational Health and Safety Act 2004 (Vic) s 21(3); Occupational Health and Safety Act 1991 (Cth) s 16(4); Occupational Health, Safety and Welfare Act 1986 (SA) s 4(2). The National Review (see: R Stewart-Crompton, S Mayman and B Sherrif, *National Review into Model Occupational Health and Safety Laws, First Report, October 2008*, <http://www.nationalohsreview.gov.au/>), recommended that the “primary duty” under the national law be imposed on a “person conducting a business or undertaking” for the protection of “a broad category of ‘workers’ and others” (Recommendation 10). This was due to a concern that the existing laws provided inadequate protection for some people at work. The recommendation was accepted by the Workplace Relations Ministers’ Council and finds statutory expression in s 19.

The Review noted with approval, the existing duty on an employer in the conduct of its “business or undertaking” in s 28 of the Workplace Health and Safety Act 1995 (Qld); see also s 21 of the Workplace Safety Act 2008 (ACT). The National Review recommended the inclusion of “business or undertaking” (see: R Stewart-Crompton, S Mayman and B Sherrif, *National Review into Model Occupational Health and Safety Laws, Second Report, January 2009*, <http://www.nationalohsreview.gov.au/>), Recommendation 81). This recommendation was accepted by the Workplace Relations Ministers’ Council (see p 18) and is given effect in s 5. It is important to note that s 5 is not strictly a definition. It outlines circumstances in which a “person” will, or will not, be taken to be conducting a business or undertaking.

[20,020.10] Person The word takes its meaning from Acts interpretations laws and extends to both natural persons (individuals) and bodies corporate (see Explanatory Memorandum (EM) at 20).

[20,020.15] Business or undertaking According to the Explanatory Memorandum (EM) at 23, the phrase is intended to be read broadly and covers businesses or undertakings conducted by persons including employers, principal contractors, head contractors, franchisors and the Crown. The concept is relatively new to work health and safety and, according to the EM, “[a]n exemption contemplated by subclause 5(6) may be required to remove unintended consequences associated with the new concept” (EM, 29).

[20,020.20] Business The term is not defined in the Bill and is therefore to be given its ordinary meaning. The High Court has held that “. . . the word “business” is notorious for taking its colour and its content from its surroundings”: *Re Australian Industrial Relations Commission* (1990) 171 CLR 216 at 226; 96 ALR 513; 65 ALJR 58; BC9002898 (Mason CJ, Gaudron and McHugh JJ). In that case, a government body administering roads and traffic was held to be a “business”. In *PP Consultants Pty Ltd v Finance Sector Union of Australia* (2000) 201 CLR 648 at 654; 176 ALR 205; [2000] HCA 59; BC200006929 (at [13]), the High Court (Gleeson CJ, Gaudron, McHugh and Gummow JJ) considered that “notions of “profit” and “commercial enterprise” will ordinarily be significant in determining whether the activities of a private individual or corporation constitute a business”. See also *Hope v Bathurst City Council* (1980) 144 CLR 1 at 8–9; 29 ALR 577; 54 ALJR 345; BC8000075. where the court considered the meaning of “the business of grazing”. These authorities must be read subject to s 5(1)(b) of the Bill which makes clear that profit or gain are not necessarily required for an activity to be a “business”.

[20,020.25] Undertaking The term has long been used in Occupational Health and Safety (OHS) laws. In *Whittaker v Delmina Pty Ltd* (1998) 87 IR 268; [1998] VSC 175; BC9807172 at 280–1, Hansen J considered that it was broad in its meaning and meant “business or enterprise”. The circumstances of the “conduct” of an undertaking “must be as infinite as they may be variable”. Whether a given activity falls within the “conduct” of a “business or undertaking” is a question of fact: *R v Associated Octel Co Ltd* [1996] 4 All ER 846 at 852; [1996] 1 WLR 1543; [1997] Crim LR 355 (UKHL); *R v Mara* [1987] 1 All ER 478; [1987] 1 WLR 87; [1987] ICR 165. In *VWA v Horsham Rural City Council* [2008] VSC 404; BC200808807 at [38]–[39], the Supreme Court of Victoria (Hollingworth J), considered the meaning of “conduct of the undertaking” in s 23 of the Occupational Health and Safety Act 2004 (Vic). The court doubted whether, by merely leasing out a property to an organisation, a person who happened also to be an employer, would attract the duty imposed by s 23.

[20,020.30] Volunteer associations Section 5(7) excludes a “volunteer association” from the reach of the concept of a Person Conducting a Business or Undertaking (PCBU). “Volunteer association” is defined in s 5(8). “Volunteer” is in turn defined in s 4 as “a person who is acting on a voluntary basis (irrespective of whether the person receives out-of-pocket expenses)”. To attract the exclusion, a group of volunteers must be working for one or more “community purposes”. According to the Explanatory Memorandum (EM), at 32, this expression is intended to cover “philanthropic or benevolent purposes” such as the promotion of art, culture, science, religion, education, medicine or charity as well as “sporting or recreational purposes”. It is unclear whether the “community purpose” must be the only purpose for which the association exists or if need only be one of several purposes. The association will lose its exempt status if one or more of the volunteers “employs any person to carry out work for the volunteer association”: s 5(8). The EM provides that the term “employ” is to be given its traditional meaning ie it requires a contract of service: *Hollis v Vabu Pty Ltd* (2001) 207 CLR 21; 181 ALR 263; [2001] HCA 44; BC200104558. According to the EM, at 30, “[h]iring a contractor (eg to audit accounts, drive a bus on a day trip etc)”, will not jeopardise exempt status. However, it seems that the employment of a cleaner pursuant to a “contract of service” would render a volunteer association a PCBU and therefore bound by the onerous duties in Pt 2 of the Bill. This level of uncertainty for thousands of voluntary community groups is most unfortunate.

[20,020.35] Workers The term is defined in s 7. A person who is engaged solely as a worker in a business or undertaking will have the duty imposed by s 28.

[20,020.40] Officers The term is defined in s 5. A person who is engaged solely as an officer in a business or undertaking will have the duty imposed by s 27.

[20,020.45] Local authority This includes a local authority under a corresponding work health and safety law: see s 5.

[20,025] Meaning of supply

6 (1) A **supply** of a thing includes a supply and a resupply of the thing by way of sale, exchange, lease, hire or hire-purchase, whether as principal or agent.

(2) A supply of a thing occurs on the passing of possession of the thing to the person or an agent of the person to be supplied.

(3) A supply of a thing does not include:

- (a) the return of possession of a thing to the owner of the thing at the end of a lease or other agreement; or
- (b) a prescribed supply.

(4) A financier is taken not to supply plant, a substance or a structure for the purposes of this Act if:

- (a) the financier has, in the course of the financier's business as a financier, acquired ownership of, or another right in, the plant, substance or structure on behalf of a customer of the financier; and
- (b) the action by the financier, that would be a supply but for this subsection, is taken by the financier for, or on behalf of, that customer.

(5) If subsection (4) applies, the person (other than the financier) who had possession of the plant, substance or structure immediately before the financier's customer obtained possession of the plant, substance or structure is taken for the purposes of this Act to have supplied the plant, substance or structure to the financier's customer.

COMMENTARY TO SECTION 6

Suppliers [20,025.5]

[20,025.5] Suppliers Section 25 of the Act imposes an "upstream duty" on a Person Conducting a Business or Undertaking (PCBU) that supplies plant, a substance or a structure in certain circumstances. This section clarifies the meaning of "supply". It is consistent with some existing Occupational Health and Safety (OHS) laws: eg s 30(2) of the Occupational Health and Safety Act 2004 (Vic); s 19(2) of the Occupational Health and Safety Act 1991 (Cth).

[20,030] Meaning of worker

7 (1) A person is a **worker** if the person carries out work in any capacity for a person conducting a business or undertaking, including work as:

- (a) an employee; or
- (b) a contractor or subcontractor; or
- (c) an employee of a contractor or subcontractor; or
- (d) an employee of a labour hire company who has been assigned to work in the person's business or undertaking; or
- (e) an outworker; or
- (f) an apprentice or trainee; or
- (g) a student gaining work experience; or
- (h) a volunteer; or
- (i) a person of a prescribed class.

(2) For the purposes of this Act, a police officer is:

- (a) a worker; and
- (b) at work throughout the time when the officer is on duty or lawfully performing the functions of a police officer, but not otherwise.

(3) The person conducting the business or undertaking is also a **worker** if the person is an individual who carries out work in that business or undertaking.

Note See the jurisdictional notes in the Appendix.

Editor's note: For variations to the Model legislation for each jurisdiction refer to the entries as set out below.

Federal — s 7 of the Federal WHS legislation.

QLD — s 7 of the QLD WHS legislation.

SA — s 7 of the SA WHS legislation.

ACT — s 7 of the ACT WHS legislation.

COMMENTARY TO SECTION 7

Worker	[20,030.5]
Person Conducting a Business or Undertaking as a worker	[20,030.10]

[20,030.5] Worker As noted above, the model law departs radically from the historically used term “employee”. According to the Explanatory Memorandum (EM), at 38, the law “adopts a broad definition of ‘worker’ in place of ‘employee’ to recognise the changing nature of work relationships and to ensure health and safety protection is extended to all types of workers”. As discussed below, the “primary duty” imposed by s 19 is on a Person Conducting a Business or Undertaking (PCBU) for the benefit of a “worker” engaged, or caused to be engaged, by the PCBU. Section 7 is not an exclusive definition; it merely provides examples of categories of people that fall within the definition of “worker”. Therefore, a sub-contractor and “some remoter species of sub-contract” will be workers under the Act: see: *R v ACR Roofing Ltd* (2004) 11 VR 187; 142 IR 157; [2004] VSCA 215; BC200408208 at [54].

[20,030.10] Person Conducting a Business or Undertaking as a worker An individual can be both a Person Conducting a Business or Undertaking (PCBU) and a “worker” if the business or undertaking is carried on by the individual eg as a sole trader. The individual will then owe duties as a PCBU (eg under s 19) and as a worker (under s 28). Section 15 recognises that a person may have more than one duty.

[20,035] Meaning of workplace

8 (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.

COMMENTARY TO SECTION 8

Workplace	[20,035.5]
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[20,035.5] Workplace The concept of “workplace” is important to the regulatory scheme. A duty is owed by a person with management or control of a “workplace” (s 20). Similarly, compliance powers are conferred on inspectors in relation to “workplaces” (see eg ss 163–166). The Act adopts a broad definition. The Explanatory Memorandum (EM), at 49, makes clear that there is no requirement for work to be performed at a place at a particular time for it to be a workplace. Specific reference is made to the case of *Telstra Corp v Smith* (2009) 177 FCR 577; 111 ALD 272; [2009] FCAFC 103; BC200907946, where the Federal Court held that a Telstra pit was a “workplace” at all times. The Federal Court, at first instance, (in *Telstra Corp Ltd v Smith* (2008) 105 ALD 521; 178 IR 430; [2008] FCA 1859; BC200810959) distinguished a line of NSW cases that had adopted a narrower approach: see the discussion at [21]–[35].

[20,040] Examples and notes

9 (1) An example at the foot of a provision forms part of this Act.

(2) A note at the foot of a provision forms part of this Act.

Note See the jurisdictional notes in the Appendix.

Editor's note: For variations to the Model legislation for each jurisdiction refer to the entries as set out below.

QLD — s 9 of the QLD WHS legislation.

ACT — s 9 of the ACT WHS legislation.

COMMENTARY TO SECTION 9

Examples	[20,040.5]
Notes	[20,040.10]

[20,040.5] Examples In some jurisdictions, examples are not to be taken to be exclusive and where an example conflicts with a provision, the provision will prevail: Acts Interpretation Act 1901 (Cth) s 15AD; Acts Interpretation Act 1954 (Qld) s 14D.

[20,040.10] Notes This is a departure from the general law under which notes are not to be taken to be part of an Act: see Acts Interpretation Act 1901 (Cth) s 13(3); Acts Interpretation Act 1954 (Qld) s 14; Acts Interpretation Act 1931 (Tas) s 6.

DIVISION 4 — APPLICATION OF ACT

[20,045] Act binds the Crown

10 (1) This Act binds the Crown in right of this jurisdiction and, in so far as the legislative power of the Parliament of this jurisdiction permits, the Crown in all its other capacities.

Note See the jurisdictional notes in the Appendix.

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

(3) Without limiting subsection (1), the Crown is liable for a contravention of a WHS civil penalty provision.

Editor's note: For variations to the Model legislation for each jurisdiction refer to the entries as set out below.

Federal — s 10 of the Federal WHS legislation.

QLD — s 10 of the QLD WHS legislation.

ACT — s 10 of the ACT WHS legislation.

COMMENTARY TO SECTION 10

Application to Crown	[20,045.5]
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[20,045.5] Application to Crown The Explanatory Memorandum (EM), at 54, notes that s 10 makes it clear “that the Crown is liable for an offence against the Bill . . . [and] that the ‘Crown shield’ that would otherwise provide immunity against prosecution for the Crown does not apply”. For an example of a case where the immunity was discussed by the Supreme Court of Victoria in a prosecution of a statutory agency under the former Occupational Health and Safety Act 1985 (Vic), see *Roads Corporation v Gerkens* BC9300608.

The complex question of the applicability of the laws of one jurisdiction to the Crown in right of another jurisdiction (see *Re Residential Tenancies Tribunal of NSW* (1997) 190 CLR 410; 146 ALR 495; 71 ALJR 1254; BC9703511) is to be addressed as part of the implementing laws of each of the jurisdictions.

[20,050] Extraterritorial application

11

Note See the jurisdictional note in the Appendix.

Editor's note: For variations to the Model legislation for each jurisdiction refer to the entries as set out below.

Federal — s 11 of the Federal WHS legislation.
 NSW — s 11 of the NSW WHS legislation.
 QLD — s 11 of the QLD WHS legislation.
 SA — s 11 of the SA WHS legislation.
 TAS — s 11 of the TAS WHS legislation.
 ACT — s 11 of the ACT WHS legislation.

COMMENTARY TO SECTION 11

Extraterritorial application [20,050.5]

[20,050.5] Extraterritorial application This is the subject of a jurisdictional note under s 11 which provides that “each jurisdiction may insert a local provision relating to extraterritorial application including extraterritorial reach of offences”. According to the Explanatory Memorandum (EM), at 55, “some provisions will have some extra-territorial application”. An example is given, at 56, of the Bill applying to “all PCBUs who operate state or territory-registered ships out of the relevant jurisdiction, subject to Commonwealth maritime work health and safety laws”.

[20,055] Scope**12**

Note See the jurisdictional notes in the Appendix.

Editor’s note: For variations to the Model legislation for each jurisdiction refer to the entries as set out below.

Federal — s 12 of the Federal WHS legislation.
 NSW — s 12 of the NSW WHS legislation.
 QLD — s 12 of the QLD WHS legislation.
 SA — s 12 of the SA WHS legislation.
 TAS — s 12 of the TAS WHS legislation.
 ACT — s 12 of the ACT WHS legislation.

COMMENTARY TO SECTION 12

Scope [20,055.5]

[20,055.5] Scope This is the subject of a jurisdictional note under s 12 advising that “each jurisdiction may insert local provisions to establish the relationship between the model provisions and other Acts in the jurisdiction”. An example of such a provision in existing Occupational Health and Safety (OHS) laws is s 4 of the Occupational Health and Safety Act 1991 (Cth). As with the existing OHS laws, the Act will not operate at all States where s 109 of the Commonwealth Constitution applies to a Commonwealth law that is inconsistent: see *Heli-Aust Pty Ltd v Cahill* (2011) 194 FCR 502; 204 IR 173; [2011] FCAFC 62; BC201102891.