Extracts from the

South Australia Work Health and Safety Act 2012

Part 1—Preliminary

Division 2—Object

3—Object

(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
   (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.

Division 3—Interpretation

Subdivision 2—Other important terms

5—Meaning of person conducting a business or undertaking

(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 one 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.
7—Meaning of worker
(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.
(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.

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.

Part 2—Health and safety duties
Division 1—Introductory
Subdivision 1—Principles that apply to duties
13—Principles that apply to duties
This Subdivision sets out the principles that apply to all duties that persons have under this Act.
Note—
The principles will apply to duties under this Part and other Parts of this Act such as duties relating to incident notification and consultation.
14—Duties not transferrable
A duty cannot be transferred to another person.
15—Person may have more than one duty
A person can have more than one duty by virtue of being in more than one class of duty holder.
16—More than one person can have a duty
(1) More than one 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 one 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 or would have had that capacity but for an agreement or arrangement purporting to limit or remove that capacity.
17—Management of risks
(1) 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.
(2) A person must comply with subsection (1) to the extent to which 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.

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.

Division 2—Primary duty of care

19—Primary duty of care

(1) A person conducting a business or undertaking must ensure, so far as is reasonably practicable, the health and safety of—

(a) workers engaged, or caused to be engaged by the person; and
(b) 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.

(2) A person conducting a business or undertaking 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 person conducting a business or undertaking must ensure, so far as is reasonably practicable—

(a) the provision and maintenance of a work environment without risks to health and safety; and
(b) the provision and maintenance of safe plant and structures; and
(c) the provision and maintenance of safe systems of work; and
(d) the safe use, handling and storage of plant, structures and substances; and
(e) the provision of adequate facilities for the welfare at work of workers in carrying out work for the business or undertaking, including ensuring access to those facilities; and
(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; and
(g) that the health of workers and the conditions at the workplace are monitored for the purpose of preventing illness or injury of workers arising from the conduct of the business or undertaking.

(4) If—

(a) a worker occupies accommodation that is owned by or under the management or control of the person conducting the business or undertaking; and
(b) the occupancy is necessary for the purposes of the worker’s engagement because other accommodation is not reasonably available,

the person conducting the business or undertaking must, so far as is reasonably practicable, maintain the premises so that the worker occupying the premises is not exposed to risks to health and safety.

(5) A self-employed person must ensure, so far as is reasonably practicable, his or her own health and safety while at work.

Note—

A self-employed person is also a person conducting a business or undertaking for the purposes of this section.
Division 3—Further duties of persons conducting businesses or undertakings

20—Duty of persons conducting businesses or undertakings involving management or control of workplaces

(1) In this section—

person with management or control of a workplace means a person conducting a business or undertaking to the extent that the business or undertaking involves the management or control, in whole or in part, of the workplace but does not include—

(a) the occupier of a residence, unless the residence is occupied for the purposes of, or as part of, the conduct of a business or undertaking; or

(b) a prescribed person.

(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 person conducting a business or undertaking has a duty or obligation under this Act, an officer of the person conducting the business or undertaking must exercise due diligence to ensure that the person conducting the business or undertaking complies with that duty or obligation.

(2) Subject to subsection (3), the maximum penalty applicable under Division 5 of this Part for an offence relating to the duty of an officer under this section is the maximum penalty fixed for an officer of a person conducting a business or undertaking for that offence.

(3) Despite anything to the contrary in section 33, if the duty or obligation of a person conducting a business or undertaking was imposed under a provision other than a provision of Division 2 or 3 of this Part or this Division, the maximum penalty under section 33 for an offence by an officer under section 33 in relation to the duty or obligation is the maximum penalty fixed under the provision creating the duty or obligation for an individual who fails to comply with the duty or obligation.

(4) An officer of a person conducting a business or undertaking may be convicted or found guilty of an offence under this Act relating to a duty under this section whether or not the person conducting the business or undertaking has been convicted or found guilty of an offence under this Act relating to the 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 person conducting the business or undertaking and generally of the hazards and risks associated with those operations; and

(c) to ensure that the person conducting the business or undertaking 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 person conducting the business or undertaking 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 person conducting the business or undertaking has, and implements, processes for complying with any duty or obligation of the person conducting the business or undertaking under this Act; and

Examples—

For the purposes of paragraph (e), the duties or obligations under this Act of a person conducting a business or undertaking may include:

• reporting notifiable incidents;

• consulting with workers;

• ensuring compliance with notices issued under this Act;

• ensuring the provision of training and instruction to workers about work health and safety;

• ensuring that health and safety representatives receive their entitlements to training.

(f) to verify the provision and use of the resources and processes referred to in paragraphs (c) to (e)
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 person conducting the business or undertaking to allow the person to comply with this Act; and
(d) co-operate with any reasonable policy or procedure of the person conducting the business or undertaking relating to health or safety at the workplace that has been notified to workers.

29—Duties of other persons at the workplace
A person at a workplace (whether or not the person has another duty under this Part) 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 person is reasonably able, with any reasonable instruction that is given by the person conducting the business or undertaking to allow the person conducting the business or undertaking to comply with this Act.

Part 3—Incident notification

35—What is a notifiable incident
In this Act—
notifiable incident means—
(a) the death of a person; or
(b) a serious injury or illness of a person; or
(c) a dangerous incident.

36—What is a serious injury or illness
In this Part—
serious injury or illness of a person means an injury or illness requiring the person to have—
(a) immediate treatment as an in-patient in a hospital; or
(b) immediate treatment for—
(i) the amputation of any part of his or her body; or
(ii) a serious head injury; or
(iii) a serious eye injury; or
(iv) a serious burn; or
(v) the separation of his or her skin from an underlying tissue (such as degloving or scalping); or
(vi) a spinal injury; or
(vii) the loss of a bodily function; or
(viii) serious lacerations; or
(c) medical treatment within 48 hours of exposure to a substance, and includes any other injury or illness prescribed by the regulations but does not include an illness or injury of a prescribed kind.

37—What is a dangerous incident
In this Part—
dangerous incident means an incident in relation to a workplace that exposes a worker or any other person to a serious risk to a person's health or safety emanating from an immediate or imminent exposure to—
(a) an uncontrolled escape, spillage or leakage of a substance; or
(b) an uncontrolled implosion, explosion or fire; or
(c) an uncontrolled escape of gas or steam; or
(d) an uncontrolled escape of a pressurised substance; or
(e) electric shock; or
(f) the fall or release from a height of any plant, substance or thing; or
(g) the collapse, overturning, failure or malfunction of, or damage to, any plant that is required to be authorised for use in accordance with the regulations; or
(h) the collapse or partial collapse of a structure; or
(i) the collapse or failure of an excavation or of any shoring supporting an excavation; or
(j) the inrush of water, mud or gas in workings, in an underground excavation or tunnel; or
(k) the interruption of the main system of ventilation in an underground excavation or tunnel; or
(l) any other event prescribed by the regulations,
but does not include an incident of a prescribed kind.

38—Duty to notify of notifiable incidents
(1) A person who conducts a business or undertaking must ensure that the regulator is notified immediately after becoming aware that a notifiable incident arising out of the conduct of the business or undertaking has occurred.
   Maximum penalty:
   (a) in the case of an individual—$10 000;
   (b) in the case of a body corporate—$50 000.
(2) The notice must be given in accordance with this section and by the fastest possible means.
(3) The notice must be given—
   (a) by telephone; or
   (b) in writing.
   Example—
   The written notice can be given by fax, email or other electronic means.
(4) A person giving notice by telephone must—
   (a) give the details of the incident requested by the regulator; and
   (b) if required by the regulator, give a written notice of the incident within 48 hours of that requirement being made.
(5) A written notice must be in a form, or contain the details, approved by the regulator.
(6) If the regulator receives a notice by telephone and a written notice is not required, the regulator must give the person conducting the business or undertaking—
   (a) details of the information received; or
   (b) an acknowledgement of receiving the notice.
(7) A person conducting a business or undertaking must keep a record of each notifiable incident for at least 5 years from the day that notice of the incident is given to the regulator under this section.
   Maximum penalty:
   (a) in the case of an individual—$5 000;
   (b) in the case of a body corporate—$25 000.

Part 4—Authorisations

44—Requirements for prescribed qualifications or experience
(1) A person must not carry out work at a workplace if—
   (a) the regulations require the work, or class of work, to be carried out by, or under the supervision of, a person who has prescribed qualifications or experience; and
   (b) the person does not have the prescribed qualifications or experience or the work is not carried out under the supervision of a person who has the prescribed qualifications or experience.
   Maximum penalty:
   (a) in the case of an individual—$20 000;
   (b) in the case of a body corporate—$100 000.
(2) A person who conducts a business or undertaking must not direct or allow a worker to carry out work at a workplace if—
   (a) the regulations require the work, or class of work, to be carried out by, or under the supervision of, a person who has prescribed qualifications or experience; and
   (b) the worker does not have the prescribed qualifications or experience or the work is not carried out under the supervision of a person who has the prescribed qualifications or experience.
   Maximum penalty:
   (a) in the case of an individual—$20 000;
   (b) in the case of a body corporate—$100 000.
Part 5—Consultation, representation and participation

Division 2—Consultation with workers

47—Duty to consult workers

(1) The person conducting a business or undertaking must, so far as is reasonably practicable, consult, in accordance with this Division and the regulations, 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 work health or safety. Maximum penalty:
   (a) in the case of an individual—$20 000;
   (b) in the case of a body corporate—$100 000.

(2) If the person conducting the business or undertaking and the workers have agreed to procedures for consultation, the consultation must be in accordance with those procedures.

(3) The agreed procedures must not be inconsistent with section 48.

48—Nature of consultation

(1) Consultation under this Division requires—
   (a) that relevant information about the matter is shared with workers; and
   (b) that workers be given a reasonable opportunity—
      (i) to express their views and to raise work health or safety issues in relation to the matter; and
      (ii) to contribute to the decision-making process relating to the matter; and
   (c) that the views of workers are taken into account by the person conducting the business or undertaking; and
   (d) that the workers consulted are advised of the outcome of the consultation in a timely manner.

(2) If the workers are represented by a health and safety representative, the consultation must involve that representative.

49—When consultation is required

Consultation under this Division is required in relation to the following health and safety matters:

(a) when identifying hazards and assessing risks to health and safety arising from the work carried out or to be carried out by the business or undertaking;

(b) when making decisions about ways to eliminate or minimise those risks;

(c) when making decisions about the adequacy of facilities for the welfare of workers;

(d) when proposing changes that may affect the health or safety of workers;

(e) when making decisions about the procedures for—
   (i) consulting with workers; or
   (ii) resolving work health or safety issues at the workplace; or
   (iii) monitoring the health of workers; or
   (iv) monitoring the conditions at any workplace under the management or control of the person conducting the business or undertaking; or
   (v) providing information and training for workers; or

(f) when carrying out any other activity prescribed by the regulations for the purposes of this section.

Division 3—Health and safety representatives

Subdivision 5—Powers and functions of health and safety representatives

68—Powers and functions of health and safety representatives

(1) The powers and functions of a health and safety representative for a work group are—

(a) to represent the workers in the work group in matters relating to work health and safety; and

(b) to monitor the measures taken by the person conducting the relevant business or undertaking, or that person’s representative, in compliance with this Act in relation to workers in the work group; and

(c) to investigate complaints from members of the work group relating to work health and safety; and

(d) to inquire into anything that appears to be a risk to the health or safety of workers in the work group, arising from the conduct of the business or undertaking.

(2) In exercising a power or performing a function, the health and safety representative may—

(a) inspect the workplace or any part of the workplace at which a worker in the work group works—
   (i) at any time after giving reasonable notice to the person conducting the business or undertaking at that workplace; and
(ii) at any time, without notice, in the event of an incident, or any situation involving a serious risk to the health or safety of a person emanating from an immediate or imminent exposure to a hazard; and

(b) accompany an inspector during an inspection of the workplace or part of the workplace at which a worker in the work group works; and

(c) with the consent of a worker that the health and safety representative represents, be present at an interview concerning work health and safety between the worker and—
   (i) an inspector; or
   (ii) the person conducting the business or undertaking at that workplace or the person's representative; and

(d) with the consent of one or more workers that the health and safety representative represents, be present at an interview concerning work health and safety between a group of workers, which includes the workers who gave the consent, and—
   (i) an inspector; or
   (ii) the person conducting the business or undertaking at that workplace or the person's representative; and

(e) request the establishment of a health and safety committee; and

(f) receive information concerning the work health and safety of workers in the work group; and

(g) whenever necessary, request the assistance of any person.

Note—
A health and safety representative also has a power under Division 6 of this Part to direct work to cease in certain circumstances and under Division 7 of this Part to issue provisional improvement notices.

(3) Despite subsection (2)(f), a health and safety representative is not entitled to have access to any personal or medical information concerning a worker without the worker's consent unless the information is in a form that—
   (a) does not identify the worker; and
   (b) could not reasonably be expected to lead to the identification of the worker.

(4) Subsection (2)(g) does not extend beyond—
   (a) a person who works at the workplace; or
   (b) a person who is involved in the management of the relevant business or undertaking; or
   (c) a consultant who has been approved by—
      (i) the Advisory Council; or
      (ii) a health and safety committee that has responsibilities in relation to the work group that the health and safety representative represents; or
      (iii) the person conducting the business or undertaking at the workplace or the person's representative.

(5) Nothing in this Act imposes or is taken to impose a duty on a health and safety representative in that capacity.

(6) In this section—
   consultant means a person who is, by reason of his or her experience or qualifications, suitably qualified to advise on issues relating to work health, safety or welfare.

**Division 6—Right to cease or direct cessation of unsafe work**

**83—Definition of cease work under this Division**

In this Division—

*cease work under this Division* means—

(a) to cease, or refuse, to carry out work under section 84; or

(b) to cease work on a direction under section 85.

**84—Right of worker to cease unsafe work**

A worker may cease, or refuse to carry out, work if the worker has a reasonable concern that to carry out the work would expose the worker to a serious risk to the worker's health or safety, emanating from an immediate or imminent exposure to a hazard.

**85—Health and safety representative may direct that unsafe work cease**
(1) A health and safety representative may direct a worker who is in a work group represented by the representative to cease work if the representative has a reasonable concern that to carry out the work would expose the worker to a serious risk to the worker’s health or safety, emanating from an immediate or imminent exposure to a hazard.

(2) However, the health and safety representative must not give a worker a direction to cease work unless the matter is not resolved after—
(a) consulting about the matter with the person conducting the business or undertaking for whom the workers are carrying out work; and
(b) attempting to resolve the matter as an issue under Division 5 of this Part.

(3) The health and safety representative may direct the worker to cease work without carrying out that consultation or attempting to resolve the matter as an issue under Division 5 of this Part if the risk is so serious and immediate or imminent that it is not reasonable to consult before giving the direction.

(4) The health and safety representative must carry out the consultation as soon as practicable after giving a direction under subsection (3).

(5) The health and safety representative must inform the person conducting the business or undertaking of any direction given by the health and safety representative to workers under this section.

(6) A health and safety representative cannot give a direction under this section unless the representative has—
(a) completed initial training prescribed by the regulations referred to in section 72(1)(b); or
(b) previously completed that training when acting as a health and safety representative for another work group; or
(c) completed training equivalent to that training under a corresponding WHS law.

86—Worker to notify if ceases work
A worker who ceases work under this Division (otherwise than under a direction from a health and safety representative) must—
(a) as soon as practicable, notify the person conducting the business or undertaking that the worker has ceased work under this Division unless the worker ceased work under a direction from a health and safety representative; and
(b) remain available to carry out suitable alternative work.