

MODEL WORK HEALTH AND SAFETY ACT

2016 AMENDMENTS (21 MARCH 2016)

Topic	Amended provisions
<u>HSRs & assistants</u>	
<p>HSR assistants</p> <p>HSR must give notice—Model Act, clause 68</p>	<p>Amend clause 68 to insert new subclauses (3A) and (3B) so that it reads as follows—</p> <p>68 Powers and functions of health and safety representatives</p> <p>(1) The powers and functions of a health and safety representative for a work group are:</p> <ul style="list-style-type: none"> (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. <p>(2) In exercising a power or performing a function, the health and safety representative may:</p> <ul style="list-style-type: none"> (a) inspect the workplace or any part of the workplace at which a worker in the work group works: <ul style="list-style-type: none"> (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

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	<p>a worker in the work group works; and</p> <p>(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:</p> <p style="padding-left: 40px;">(i) an inspector; or</p> <p style="padding-left: 40px;">(ii) the person conducting the business or undertaking at that workplace or the person's representative; and</p> <p>(d) with the consent of 1 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:</p> <p style="padding-left: 40px;">(i) an inspector; or</p> <p style="padding-left: 40px;">(ii) the person conducting the business or undertaking at that workplace or the person's representative; and</p> <p>(e) request the establishment of a health and safety committee; and</p> <p>(f) receive information concerning the work health and safety of workers in the work group; and</p> <p>(g) whenever necessary, request the assistance of any person.</p> <p>Note</p> <p>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.</p> <p>(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:</p> <p style="padding-left: 40px;">(a) does not identify the worker; and</p> <p style="padding-left: 40px;">(b) could not reasonably be expected to lead to the identification of the worker.</p> <p>(3A) If a person assisting a health and safety representative under subsection (2)(g) requires access to the workplace to provide the assistance, the health and safety representative must give notice of</p>

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	<p>the assistant's proposed entry to:</p> <ul style="list-style-type: none"> (a) the person conducting the business or undertaking for whom the representative's workgroup carries out the work at the workplace; and (b) the person with management or control of the workplace. <p>(3B) A notice under subsection (3A) must:</p> <ul style="list-style-type: none"> (a) comply with the regulations; and (b) be given during the usual working hours at the workplace at least 24 hours, but not more than 14 days, before the assistant's entry. <p>(4) Nothing in this Act imposes or is taken to impose a duty on a health and safety representative in that capacity.</p>
<p>Refusal of entry if notice and information not given—Model Act, clause 71</p>	<p>Amend clause 71 to insert new subclause (5A) so that it reads as follows—</p> <p>71 Exceptions from obligations under section 70(1)</p> <ul style="list-style-type: none"> (1) This section applies despite section 70(1). (2) The person conducting a business or undertaking must not allow a health and safety representative 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: <ul style="list-style-type: none"> (a) does not identify the worker; and (b) could not reasonably be expected to lead to the identification of the worker. <p>Maximum penalty:</p> <p style="padding-left: 40px;">In the case of an individual—\$10 000.</p> <p style="padding-left: 40px;">In the case of a body corporate—\$50 000.</p> <ul style="list-style-type: none"> (3) The person conducting a business or undertaking is not required to give financial assistance to a health and safety representative for the purpose of the assistance referred to in section 70(1)(g). (4) The person conducting a business or undertaking is not required to allow a person assisting a health and safety representative for a work group to have access to the workplace: <ul style="list-style-type: none"> (a) if the assistant has had his or her WHS entry

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	<p>permit revoked; or</p> <p>(b) during any period that the assistant's WHS entry permit is suspended or the assistant is disqualified from holding a WHS entry permit.</p> <p>(5) The person conducting a business or undertaking may refuse on reasonable grounds to grant access to the workplace to a person assisting a health and safety representative for a work group.</p> <p>(5A) The reasonable grounds under subsection (5) include the failure of the health and safety representative to give notice under section 68(3A).</p> <p>(6) If access is refused to a person assisting a health and safety representative under subsection (5), the health and safety representative may ask the regulator to appoint an inspector to assist in resolving the matter.</p>
<p>List of HSRs</p> <p>PCBU no longer required to provide list to regulator—Model Act, clause 74</p>	<p>Amend clause 74 to delete sub-clause (2), so that it reads as follows—</p> <p>74 List of health and safety representatives</p> <p>A person conducting a business or undertaking must ensure that:</p> <p>(a) a list of each health and safety representative and deputy health and safety representative (if any) for each work group of workers carrying out work for the business or undertaking is prepared and kept up to date; and</p> <p>(b) a copy of the up-to-date list is displayed:</p> <p>(i) at the principal place of business of the business or undertaking; and</p> <p>(ii) at any other workplace that is appropriate taking into account the constitution of the relevant work group or work groups,</p> <p>in a manner that is readily accessible to workers in the relevant work group or work groups.</p> <p>Maximum penalty:</p> <p>In the case of an individual—\$2000.</p> <p>In the case of a body corporate—\$10 000.</p>

<p><u>Provisional improvement notices</u></p>	
<p>PINs to include "recommendations", not "directions"— Model Act, clause 93</p>	<p>Replace clause 93 with the following—</p> <p>93 Provisional improvement notice may include recommendations to remedy contravention</p> <p>(1) A provisional improvement notice may include recommendations concerning the measures that may be taken to remedy the contravention, prevent the likely contravention, or the matters causing the contravention or likely contravention, to which the notice relates.</p> <p>(2) It is not an offence to fail to comply with the recommendations in a notice.</p>
<p><u>WHS entry permit holders</u></p>	
<p>Notice of entry (for suspected contravention)—notice before entry—Model Act, clause 117</p>	<p>Amend clause 117 by adding new subclauses (3), (4), (5), (6), (7) & (8) so that it reads as follows—</p> <p>117 Entry to inquire into suspected contraventions</p> <p>(1) A WHS entry permit holder may enter a workplace for the purpose of inquiring into a suspected contravention of this Act that relates to, or affects, a relevant worker.</p> <p>(2) The WHS entry permit holder must reasonably suspect before entering the workplace that the contravention has occurred or is occurring.</p> <p>(3) Before entering a workplace under this section, the WHS entry permit holder must give notice of the proposed entry and the suspected contravention to:</p> <p>(a) the relevant person conducting a business or undertaking; and</p> <p>(b) the person with management or control of the workplace.</p> <p>(4) The notice must comply with the regulations.</p> <p>(5) The notice must be given during usual working hours at that workplace at least 24 hours, but not more than 14 days, before the entry.</p>

<p><u>Provisional improvement notices</u></p>	
	<p>(6) Subsection (3) does not apply if:</p> <ul style="list-style-type: none"> (a) the authorising authority has issued an exemption certificate for the entry under subsection (7); and (b) the WHS entry permit holder gives a copy of the certificate to the persons referred to in subsection (3): <ul style="list-style-type: none"> (i) before entering the workplace; or (ii) as soon as is practicable after entering the workplace. <p>(7) The authorising authority must issue an exemption certificate to a union for an entry under subsection (1) if:</p> <ul style="list-style-type: none"> (a) the union has applied for the certificate; and (b) the authorising authority reasonably believes there is a serious risk to health or safety emanating from an immediate or imminent exposure to a hazard at the workplace. <p>(8) An exemption certificate under subsection (7) must comply with the regulations.</p>
<p>Notice of entry (for suspected contravention)—notice after entry—Model Act, clause 119</p>	<p>Delete clause 119.</p>
<p>Notice of entry (for suspected contravention)—consequential amendment—Model Act, clause 120</p>	<p>Amend clause 120(1) so that it reads as follows—</p> <ul style="list-style-type: none"> (1) This section applies if a WHS entry permit holder is entitled under section 117(1) and (2) to enter a workplace to inquire into a suspected contravention of this Act.
<p>Contravention of</p>	<p>Amend the penalty at the foot of clause 123 so that it reads as follows—til</p>

<p><u>Provisional improvement notices</u></p>	
<p>WHS entry permit conditions</p> <p>Increased penalty—Model Act, clause 123</p>	<p>123 Contravening WHS entry permit conditions</p> <p>A WHS entry permit holder must not contravene a condition imposed on the WHS entry permit.</p> <p><i>WHS civil penalty provision.</i></p> <p>Maximum penalty: \$20 000.</p>
<p>Notice of entry (for suspected contravention)—notice after entry—Model Act, Appendix</p>	<p>In the Appendix, delete the Jurisdictional note that corresponds to clause 119.</p>