



Safety in Recreational Water Activities Act 2011

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Queensland

Safety in Recreational Water Activities Act 2011

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Safety in Recreational Water Activities Act 2011

An Act about health and safety in recreational water activities provided in the conduct of a business or undertaking

Part 1 Preliminary

1 Short title

This Act may be cited as the *Safety in Recreational Water Activities Act 2011*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

3 Object

- (1) The main object of this Act is to ensure the health and safety of persons to whom recreational water activities are provided by a person conducting a business or undertaking by—
- (a) protecting the persons against harm to their health, safety and welfare through the elimination or minimisation of risks arising from the provision to them of recreational water activities; and
 - (b) promoting the provision of advice, information, education and training for health and safety in relation to the provision of the recreational water activities; and
 - (c) securing compliance with this Act through effective and appropriate compliance and enforcement measures; and

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- (d) ensuring appropriate scrutiny and review of actions taken by persons exercising powers and performing functions under this Act; and
 - (e) providing a framework for continuous improvement and progressively higher standards of health and safety in relation to the provision of the recreational water activities.
- (2) In furthering subsection (1)(a), regard must be had to the principle that persons should be given the highest level of protection as is reasonably practicable against harm to their health, safety and welfare from hazards and risks arising from the provision of recreational water activities.
- (3) This Act operates in conjunction with the *Work Health and Safety Act 2011* and for that purpose substantial provisions are adopted from that Act and this Act makes provision for the relationship between this Act and that Act.

4 Application of this Act in circumstances to which Work Health and Safety Act 2011 applies

- (1) This section applies if—
- (a) this Act applies in particular circumstances; and
 - (b) the *Work Health and Safety Act 2011* also has application in the circumstances.

Note—

The *Work Health and Safety Act 2011*, schedule 1, part 2, division 4 provides that in particular circumstances the primary duty imposed by section 16 of this Act is the duty that will apply for particular persons. That provision also ensures consistency of that Act and this Act in relation to the primary duty.

- (2) The *Work Health and Safety Act 2011* continues to apply, and must be complied with, in addition to this Act.
- (3) If this Act is inconsistent with the *Work Health and Safety Act 2011*, the *Work Health and Safety Act 2011* prevails to the extent of the inconsistency.

-
- (4) However, this Act is not inconsistent with the *Work Health and Safety Act 2011* only because it—
- (a) imposes additional duties on a person on whom a duty is imposed under the *Work Health and Safety Act 2011*; or
 - (b) otherwise increases the standards of safety required for recreational water activities.

Note—

For an example of paragraphs (a) and (b), see section 18.

- (5) Without limiting subsection (2), (3) or (4)—
- (a) if a provision of this Act deals with a particular matter and a provision of the *Work Health and Safety Act 2011* deals with the same matter and it is impossible to comply with both provisions, a person must comply with the provision of the *Work Health and Safety Act 2011* and not with the provision of this Act; and
 - (b) if a provision of this Act deals with a particular matter and a provision of the *Work Health and Safety Act 2011* deals with the same matter and it is possible to comply with both provisions, a person must comply with both provisions.
- (6) The following subsections apply for the purpose of ensuring consistency between the administration of this Act and the administration of the *Work Health and Safety Act 2011*.
- (7) An inspector may not exercise a compliance power for this Act in relation to a particular matter if an inspector has already exercised a corresponding power under the *Work Health and Safety Act 2011* for the same matter and for the same purpose.
- (8) The regulator may not accept a recreational water activities health and safety undertaking from a person if the regulator has already accepted a WHS undertaking under the *Work Health and Safety Act 2011* from the person for the same matter and for the same purpose.

5 Compliance with this Act is no defence for Work Health and Safety Act 2011

Compliance with this Act, or a duty or requirement imposed under it, is not in itself a defence in a proceeding for an offence against the *Work Health and Safety Act 2011*.

6 Definitions

The dictionary in schedule 2 defines particular words used in this Act.

7 Meaning of *recreational water activity*

A *recreational water activity* is an activity carried out—

- (a) for the purposes of recreation; and
- (b) on, in or under waters.

Examples of water activity—

diving, snorkelling

Note—

This Act deals with recreational water activities only in the context of them being provided by a person in the conduct of a business or undertaking and under the management or control of the person.

8 Meaning of provision of recreational water activity

- (1) A person conducting a business or undertaking *provides* a recreational water activity if the recreational water activity is provided under the management or control of the person.

Example—

a person conducting a commercial diving business that provides recreational diving trips to the Great Barrier Reef with all necessary training, equipment and supervision

- (2) The provision of recreational water activity includes any of the following done as part of the management or control of the provided activity—
 - (a) the provision of access to a place;

- (b) supervision;
- (c) supply of anything;
- (d) advice, demonstrations or training.

Example—

A person conducts a retail business selling fins and snorkelling masks. The person for that reason alone is not a person conducting a business or undertaking providing recreational water activities.

- (3) A person conducting a business or undertaking providing recreational water activities does not provide them to a person only because the person is a worker carrying out work in the business or undertaking.

Note—

The *Work Health and Safety Act 2011* provides for the work health and safety of workers mentioned in subsection (3).

9 Act binds all persons

- (1) This Act binds all persons including the State and, so far as the legislative power of the Parliament permits, the Commonwealth and the other States.
- (2) The State, the Commonwealth and other States are liable for an offence against this Act.

Part 2 Health and safety duties

Division 1 Introductory

10 Principles that apply to a duty

This division sets out the principles that apply to a duty that a person has under this Act.

11 Duty not transferable

A duty can not be transferred to another person.

12 Person may have more than 1 duty

A person can have more than 1 duty by virtue of being in more than 1 class of duty holder.

13 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 or would have had that capacity but for an agreement or arrangement purporting to limit or remove that capacity.

14 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.

15 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 Duties

16 Primary duty of care

- (1) A person conducting a business or undertaking that provides recreational water activities must ensure, so far as is reasonably practicable, that the health and safety of persons for whom the activities are provided are not put at risk by the provision of the recreational water activity.
- (2) Without limiting subsection (1), a person conducting a business or undertaking that provides recreational water activities must ensure, so far as is reasonably practicable—
 - (a) the provision and maintenance of safe plant and structures; and
 - (b) the safe use, handling and storage of plant, structures and substances; and

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- (c) the provision of any information, training, instruction or supervision that is necessary to protect persons for whom the activities are provided from risks to their health and safety arising from the provision of the activities; and
- (d) that persons and conditions at a place where recreational water activities are provided are monitored for the purpose of preventing illness or injury of persons for whom the activities are provided.

17 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 3 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 23, if the duty or obligation of a person conducting a business or undertaking was imposed under a provision other than a provision of this division, the maximum penalty under section 23 for an offence by an officer under section 23 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 recreational water activities health and safety; 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 recreational water activities provided 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

Example—

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

- reporting notifiable incidents
 - ensuring compliance with notices issued under this Act
 - ensuring the provision of training and instruction to workers about health and safety in providing recreational water activities.
- (f) to verify the provision and use of the resources and processes mentioned in paragraphs (c) to (e).

18 Duties of workers

While providing recreational water activities at work, a worker must—

- (a) take reasonable care that his or her acts or omissions do not adversely affect the health and safety of persons for whom recreational water activities are provided; and
- (b) 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.

19 Duties of other persons at a place where recreational water activities are provided

- (1) This section applies in relation to persons present at a place where recreational water activities are being provided in the conduct of a business or undertaking.
- (2) Persons present at the place include any of the following who are present at the place—
 - (a) a person conducting the business or undertaking;
 - (b) a worker in the business or undertaking;
 - (c) a person for whom the activities are provided;
 - (d) a person who is an onlooker or present for some other reason.
- (3) A person mentioned in subsection (2)(c) and (d) 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 present at the place; 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.

Division 3 Offences and penalties

20 Health and safety duty for recreational water activities

Health and safety duty for recreational water activities
means a duty imposed under division 2.

21 Reckless conduct—category 1

- (1) A person commits a *category 1 offence* if—
- (a) the person has a health and safety duty for recreational water activities; 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.

Maximum penalty—

- (a) for an offence committed by an individual, other than as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking—3,000 penalty units or 5 years imprisonment; or
- (b) for an offence committed by an individual as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking—6,000 penalty units or 5 years imprisonment; or
- (c) for an offence committed by a body corporate—30,000 penalty units.

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Note—

In this division, the penalty applicable to a body corporate is separately expressed. Otherwise the *Penalties and Sentences Act 1992*, section 181B applies for this Act.

- (2) The prosecution bears the burden of proving that the conduct was engaged in without reasonable excuse.
- (3) A category 1 offence is a crime.

22 Failure to comply with health and safety duty for recreational water activities—category 2

A person commits a *category 2 offence* if—

- (a) the person has a health and safety duty for recreational water activities; 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.

Maximum penalty—

- (a) for an offence committed by an individual, other than as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking—1,500 penalty units; or
- (b) for an offence committed by an individual as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking—3,000 penalty units; or
- (c) for an offence committed by a body corporate—15,000 penalty units.

Note—

See also the note to section 21(1).

23 Failure to comply with health and safety duty for recreational water activities—category 3

A person commits a *category 3 offence* if—

- (a) the person has a health and safety duty for recreational water activities; and
- (b) the person fails to comply with that duty.

Maximum penalty—

- (a) for an offence committed by an individual, other than as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking—500 penalty units; or
- (b) for an offence committed by an individual as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking—1,000 penalty units; or
- (c) for an offence committed by a body corporate—5,000 penalty units.

Note—

See also the note to section 21(1).

24 Duty prevails over particular excuses

For an offence against section 22 or 23, the Criminal Code sections 23(1) and 24 are subject to division 2.

25 Exceptions

- (1) A volunteer does not commit an offence under this division for a failure to comply with a health and safety duty for recreational water activities, except a duty under section 18 or 19.
- (2) An unincorporated association does not commit an offence under this Act for a failure to comply with a duty or obligation imposed on the unincorporated association under this Act.
- (3) However—
 - (a) an officer of an unincorporated association (other than a volunteer) may be liable for a failure to comply with a duty under section 17; and

- (b) a member of an unincorporated association may be liable for failure to comply with a duty under section 18 or 19.

Part 2A Industrial manslaughter

25A Definitions for part

- (1) In this part—

conduct means an act or omission to perform an act.

executive officer, of a corporation, means a person who is concerned with, or takes part in, the corporation's management, whether or not the person is a director or the person's position is given the name of executive officer.

senior officer, of a person conducting a business or undertaking, means—

- (a) if the person is a corporation—an executive officer of the corporation; or
 - (b) otherwise—the holder of an executive position (however described) in relation to the person who makes, or takes part in making, decisions affecting all, or a substantial part, of the person's functions.
- (2) For this part, a person's conduct *causes* death if it substantially contributes to the death.
 - (3) For this part, a reference to a worker carrying out work for a business or undertaking includes a reference to a worker who is at a place where recreational water activities are provided, or work is carried out, for the business or undertaking, including during a work break.

25B Exceptions

- (1) A volunteer does not commit an offence under this part.

- (2) Despite section 25(2), a senior officer of an unincorporated association (other than a volunteer) may commit an offence under this part.
- (3) The Criminal Code, section 23 does not apply to an offence under this part.

25C Industrial manslaughter—person conducting business or undertaking

- (1) A person conducting a business or undertaking that provides recreational water activities commits an offence if—
 - (a) a worker—
 - (i) dies in the course of carrying out work for the business or undertaking; or
 - (ii) is injured in the course of carrying out work for the business or undertaking and later dies; and
 - (b) the person's conduct causes the death of the worker; and
 - (c) the person is negligent about causing the death of the worker by the conduct.

Maximum penalty—

- (a) for an individual—20 years imprisonment; or
- (b) for a body corporate—100,000 penalty units.

Note—

See the *Work Health and Safety Act 2011*, section 244 or 251, as applied by section 36 of this Act, in relation to the imputation to a body corporate or public authority of conduct of an employee, agent or officer of the body corporate or public authority.

- (2) An offence against subsection (1) is a crime.

25D Industrial manslaughter—senior officer

- (1) A senior officer of a person conducting a business or undertaking that provides recreational water activities commits an offence if—

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- (a) a worker—
 - (i) dies in the course of carrying out work for the business or undertaking; or
 - (ii) is injured in the course of carrying out work for the business or undertaking and later dies; and
- (b) the senior officer's conduct causes the death of the worker; and
- (c) the senior officer is negligent about causing the death of the worker by the conduct.

Maximum penalty—20 years imprisonment.

- (2) An offence against subsection (1) is a crime.

Part 3 Incident notification

26 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.

27 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

Example—

treatment for a serious decompression illness arising while diving

- (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;

and includes any other injury or illness prescribed under a regulation but does not include an illness or injury of a prescribed kind.

28 What is a *dangerous incident*

In this part, a *dangerous incident* means an incident in relation to a place where recreational water activities are provided that exposes a person to a serious risk to the 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) any other event prescribed under a regulation;

but does not include an incident of a prescribed kind.

29 Duty to notify of notifiable incidents

- (1) A person who conducts a business or undertaking that provides recreational water activities must ensure that the

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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—100 penalty units.

- (2) The notice must be given as required under 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 facsimile, 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 providing recreational water activities 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—50 penalty units.

30 Duty to preserve incident sites

- (1) The person with management or control of a place at which recreational water activities are provided and at which a notifiable incident has occurred must ensure, so far as is reasonably practicable, that the site where the incident occurred is not disturbed until an inspector arrives at the site or any earlier time that an inspector directs.

Maximum penalty—100 penalty units.

- (2) In subsection (1) a reference to a site includes any plant, substance, structure or thing associated with the notifiable incident.
- (3) Subsection (1) does not prevent any action—
 - (a) to assist an injured person; or
 - (b) to remove a deceased person; or
 - (c) that is essential to make the site safe or to minimise the risk of a further notifiable incident; or
 - (d) that is associated with a police investigation; or
 - (e) for which an inspector or the regulator has given permission.

Part 4 Enforcement

31 General provision for applied WHS provision

- (1) This section applies for the purpose of applying, for this Act, a provision of the *Work Health and Safety Act 2011* that, under this part, is applied for this Act.
- (2) A reference in an applied WHS provision to the *Work Health and Safety Act 2011* is taken to be a reference to this Act.

Example—

An applied WHS provision uses the term ‘this Act’. As enacted in the *Work Health and Safety Act 2011* it means that Act, but as an applied WHS provision for this Act it means this Act.

- (3) Subsection (4) applies if—
- (a) a provision of the *Work Health and Safety Act 2011* that is applied for this Act mentions another provision of that Act (the *mentioned provision*); and
 - (b) the mentioned provision has also been applied for this Act.
- (4) The reference to the mentioned provision is taken to be a reference to that provision as applied for this Act.

Example—

- 1 Section 32 applies the *Work Health and Safety Act 2011*, section 155 for this Act.
 - 2 Applied WHS section 155 mentions section 172 of that Act.
 - 3 Section 172 of that Act has been applied as a provision for this Act by section 33(3).
 - 4 Therefore, in applied WHS section 155, the reference to section 172 is taken to be a reference to applied WHS section 172.
- (5) Subject to this Act, a term used in an applied WHS provision has the same meaning as it has in the *Work Health and Safety Act 2011*, with necessary changes for its application for this Act.

32 The regulator

- (1) The regulator under the *Work Health and Safety Act 2011* is the regulator under this Act.
- (2) The regulator has, for this Act, the same functions as the regulator has for the *Work Health and Safety Act 2011* under section 152 of that Act, and that section applies for this Act as if in the section—
- (a) a reference to a health and safety matter were a reference to a matter relating to recreational water activities health and safety; and
 - (b) a reference to a corresponding regulator were a reference to the corresponding regulator under this Act.

- (3) Sections 153 to 155 of the *Work Health and Safety Act 2011* apply for this Act.

33 Inspectors and enforcement measures

- (1) An inspector under the *Work Health and Safety Act 2011* is an inspector under this Act.
- (2) The *Work Health and Safety Act 2011*, sections 157 to 159 apply for this Act, and an identity card issued under applied WHS section 157(1) is taken to have been issued for this Act.
- (3) The *Work Health and Safety Act 2011*, part 9, divisions 2 to 6 and part 10 apply for this Act as if—
- (a) a reference to a workplace were a reference to a place where recreational water activities are provided by a person in the conduct of a business or undertaking; and
 - (b) a reference to work health and safety were a reference to recreational water activities health and safety.

34 Enforceable undertakings

The *Work Health and Safety Act 2011*, part 11 applies for this Act as if—

- (a) a reference in the part to a contravention of that Act were a reference to a contravention of this Act; and
- (b) a reference to a WHS undertaking were a reference to a recreational water activities health and safety undertaking; and
- (c) a reference to a category 1 offence or category 2 offence were a reference to a category 1 offence or category 2 offence under this Act; and
- (d) a reference to an offence against part 2A were a reference to an offence against part 2A of this Act.

35 Review of decisions

- (1) The table in applied WHS schedule 2A (other than to the extent to which it relates to sections 54(2), 72(6), 76(6) and 102 of the *Work Health and Safety Act 2011*) states—
 - (a) decisions made under this Act that are reviewable under this part (*reviewable decisions*); and
 - (b) who is eligible to apply for review of a reviewable decision (the *eligible person*).
- (2) Jurisdiction is conferred on QCAT to hear and decide an external review relating to a reviewable decision.
- (3) The *Work Health and Safety Act 2011*, part 12 (other than section 223(1)) and schedule 2A (as provided under subsection (1)) apply for this Act as if—
 - (a) a reference in those provisions, other than in applied WHS section 224, to an internal review were a reference to an internal review as defined under applied WHS section 224; and
 - (b) a reference in those provisions to a reviewable decision or eligible person were a reference to a reviewable decision or eligible person under subsection (1).
- (4) In this section—

external review means an external review as defined under applied WHS section 229.

36 Legal proceedings

The *Work Health and Safety Act 2011*, part 13 (other than division 7) applies for this Act as if—

- (a) a reference in the part to a category 1 or category 2 offence were a reference to a category 1 or category 2 offence against this Act; and
- (aa) a reference in the part to an offence against part 2A were a reference to an offence against part 2A of this Act; and

- (b) subject to paragraph (a), a reference in the part to an offence against or contravention of that Act were a reference to an offence against or contravention of this Act; and
- (c) a reference in the part to a work health and safety duty provision were a reference to a provision of part 2, division 2; and
- (d) a reference in the part to a court-ordered WHS undertaking were a reference to a court-ordered recreational water activities health and safety undertaking; and
- (e) a reference in the part to an improvement notice, prohibition notice or non-disturbance notice were a reference to those notices under an applied WHS provision.

37 Civil liability not affected by this Act

Nothing in this Act is to be construed as—

- (a) conferring a right of action in civil proceedings for a contravention of a provision of this Act; or
- (b) conferring a defence to an action in civil proceedings or otherwise affecting a right of action in civil proceedings; or
- (c) affecting the extent (if any) to which a right of action arises, or civil proceedings may be taken, for breaches of duties or obligations imposed under a regulation.

Part 5 **General**

Division 1 **General provisions**

38 **Offence to give false or misleading information**

- (1) A person must not give information in complying or purportedly complying with this Act that the person knows—
- (a) to be false or misleading in a material particular; or
 - (b) omits any matter or thing without which the information is misleading.

Maximum penalty—100 penalty units.

- (2) A person must not produce a document in complying or purportedly complying with this Act that the person knows to be false or misleading in a material particular without—
- (a) indicating how it is false or misleading and, if practicable, providing correct information; or
 - (b) 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; and
 - (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.

Maximum penalty—100 penalty units.

- (3) Subsection (2) places an evidential burden on the accused to show that the accused had indicated the extent to which the document was false or misleading or that the accompanying document sufficiently explained the extent to which the document was false or misleading.

39 Act does not affect legal professional privilege

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

40 Immunity from liability

- (1) An inspector, or other person engaged in the administration of this Act, incurs no civil liability for an act or omission done or omitted to be done in good faith and in the execution or purported execution of powers and functions under this Act.
- (2) A civil liability that would, but for subsection (1), attach to a person, attaches instead to the State.

41 Confidentiality of information

- (1) This section applies if a person obtains information or gains access to a document in exercising any power or function under this Act.
- (2) The person must not do any of the following—
 - (a) disclose to anyone else—
 - (i) the information; or
 - (ii) the contents of or information contained in the document;
 - (b) give access to the document to anyone else;
 - (c) use the information or document for any purpose.Maximum penalty—100 penalty units.
- (3) Subsection (2) does not apply to the disclosure of information, or the giving of access to a document or the use of information or a document—
 - (a) about a person, with the person's consent; or
 - (b) that is necessary for the exercise of a power or function under this Act; or

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- (c) 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—
 - (i) is necessary for administering, or monitoring or enforcing compliance with, this Act; or
 - (ii) is necessary for the administration or enforcement of another Act prescribed under a regulation; or
 - (iii) 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
 - (iv) is required for the exercise of a power or function under a corresponding law; or
 - (d) 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
 - (e) that is required or authorised under a law; or
 - (f) to a Minister.
- (4) A person must not intentionally disclose to another person the name of an individual who has made a complaint in relation to that other person unless—
- (a) the disclosure is made with the consent of the complainant; or
 - (b) the disclosure is required under a law.

Maximum penalty—100 penalty units.

42 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.

Division 2 Codes of practice

43 Approved codes of practice

- (1) The Minister may approve a code of practice for the purposes of this Act and may vary or revoke an approved code of practice.
- (2) A code of practice, or an instrument varying or revoking a code of practice, has no effect unless the Minister gives notice of its making.
- (3) A notice under subsection (2) is subordinate legislation.
- (4) A code of practice, or an instrument varying or revoking a code of practice, commences on the later of the following—
 - (a) the day the notice under subsection (2) commences;
 - (b) the day the code or instrument provides that it commences.
- (5) A code of practice expires 10 years after its commencement.
- (6) As soon as practicable after approving a code of practice, or varying or revoking an approved code of practice, the Minister must ensure that notice of the approval, variation or revocation is published in a newspaper circulating generally throughout the State.
- (7) The Minister must ensure that a copy of each code of practice as in force from time to time and any document applied, adopted or incorporated by the code of practice is made available for inspection, without charge, during normal business hours at each department office dealing with work health and safety.
- (8) A code of practice may be made available in written or electronic form.

44 Use of codes of practice in proceedings

- (1) This section applies in a proceeding for an offence against this Act.

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- (2) An approved code of practice is admissible in the proceeding as evidence of whether or not a duty or obligation under this Act has been complied with.
- (3) The court may—
 - (a) have regard to the code as evidence of what is known about a hazard or risk, risk assessment or risk control to which the code relates; and
 - (b) rely on the code in determining what is reasonably practicable in the circumstances to which the code relates.

Note—

See section 15 for the meaning of *reasonably practicable*.

- (4) Nothing in this section prevents a person from introducing evidence of compliance with this Act in a way that is different from the code but provides a standard of recreational water activities health and safety that is equivalent to or higher than the standard required in the code.

Division 3 Regulation-making powers

45 Regulation-making powers

- (1) The Governor in Council may make regulations under this Act.
- (2) Without limiting subsection (1), a regulation may make provision for any matter stated in schedule 1 or otherwise related to safety in recreational water activities.
- (3) A regulation may—
 - (a) prescribe fees for doing any act or providing any service for the purposes of this Act; or
 - (b) prescribe a penalty for any contravention of the regulations not exceeding 300 penalty units.
- (4) Subsection (1) applies as provided under, and subsections (2) and (3) do not limit, the *Statutory Instruments Act 1992*.

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- (5) For the *Statutory Instruments Act 1992*, to remove doubt it is declared that —
- (a) a reference in sections 24 and 25 of that Act to exceptions includes exemptions, and exceptions or exemptions provided on terms or conditions (if any) prescribed; and
 - (b) a reference in 30B(1)(b) of that Act to waiving payment of a fee includes reducing or refunding the fee.

Part 6 Transitional provisions

46 Definition

In this part—

repealed Act means the repealed *Workplace Health and Safety Act 1995*.

47 Relationship with particular provisions of Work Health and Safety Act 2011

The *Work Health and Safety Act 2011*, section 281(3) and (4) does not prevent proceedings being commenced under this Act against the person to whom that section applies solely for any acts or omissions involved in the activity that happen after the repeal.

48 Enforceable undertaking preserved

- (1) Subsection (2) applies to a workplace health and safety undertaking—
- (a) made under part 5 of the repealed Act; and
 - (b) made for an alleged contravention of the repealed Act relating to recreational water activities health and safety; and
 - (c) in force immediately before the repeal of the part.

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- (2) Part 5 of the repealed Act and any other provision of the repealed Act relevant to the operation of part 5 of the repealed Act continue to apply in relation to the undertaking as if they had not been repealed.
- (3) However, for subsection (2), sections 42F, 42H and 42I of the repealed Act, as they existed before the repeal of part 5 of the repealed Act, apply as if a reference to the chief executive were a reference to the regulator.
- (4) Also, the undertaking continues in force with necessary changes, in relation to an act or omission of the identified person happening after the repeal of part 5 of the repealed Act, as if it were an undertaking accepted by the regulator under applied WHS section 216(1) to the extent to which the future behaviour assurance is material to compliance with this Act.
- (5) Subsection (4) does not apply to an act or omission that constitutes a category 1 offence.
- (6) Subsections (7) and (8) apply if, immediately before the repeal of the repealed Act—
 - (a) the chief executive has received an undertaking under section 42DA of the repealed Act; and
 - (b) the undertaking is for an alleged contravention of the repealed Act relating to recreational water activities health and safety; and
 - (c) the chief executive has not made a decision whether to accept the undertaking under section 42E of the repealed Act.
- (7) The chief executive must decide whether or not to accept the undertaking.
- (8) If the chief executive accepts the undertaking, subsections (2) to (5), (9) and (12) apply to the undertaking.
- (9) For subsection (4), a reference—
 - (a) in the undertaking to the alleged contravention; or

(b) in the future behaviour assurance to a contravention of the repealed Act;

is taken to include a reference to an alleged contravention or contravention of this Act that corresponds to those contraventions.

Note—

Paragraph (a) is relevant to the continued operation of section 42F as it existed before the amendment. Paragraph (b) is relevant if future behaviour is expressed in terms of contraventions of particular sections of the repealed Act.

- (10) Despite subsections (1) to (9), the regulator may accept a recreational water activity health and safety undertaking under applied WHS part 11 for an alleged contravention of the repealed Act relating to recreational water activities health and safety.
- (11) For subsection (10), a reference in applied WHS part 11 to this Act is taken to include a reference to the repealed Act.
- (12) In this section—

alleged contravention of the repealed Act relating to recreational water activities health and safety means an alleged contravention constituted by an act or omission that, if it happened after the commencement of this Act, would be a contravention of this Act.

future behaviour assurance is the assurance about future behaviour from the identified person included in the workplace health and safety undertaking.

identified person means the identified person for the undertaking.

49 Action by an inspector preserved

- (1) A relevant power exercised by an inspector under the repealed Act before the repeal—
- (a) if the context permits, continues to have effect for the purposes of this Act; and

(b) if the context permits, is taken to have been exercised under a corresponding provision of this Act.

(2) In this section—

corresponding provision means a provision of this Act, including an applied WHS provision, that corresponds to a provision of the repealed Act under which the power mentioned in subsection (1) was exercised.

relevant power means a power exercised in particular circumstances under the repealed Act that could be exercised under this Act in the same circumstances.

50 Improvement notice preserved

(1) This section applies to an existing improvement notice if the improvement notice is for a contravention or likely contravention of the repealed Act relating to recreational water activities health and safety.

(2) The notice continues to be enforceable against the person to whom it was given for a contravention of the repealed Act, section 117(4) that happened before the repeal as if the repealed Act had not been repealed.

(3) Also, the improvement notice continues in force and may be enforced as if it were a improvement notice given to the person under applied WHS section 117 for a contravention or likely contravention of this Act that corresponds to the old contravention.

(4) In this section—

contravention or likely contravention of the repealed Act relating to recreational water activities health and safety means a contravention or likely contravention of the repealed Act constituted by an act or omission that, if it happened after the commencement of this Act, would be a contravention of this Act.

existing improvement notice means an improvement notice—

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- (a) given by an inspector under the repealed Act, section 117 for a contravention or likely contravention of the repealed Act (the *old contravention*); and
 - (b) in force immediately before the repeal of the repealed Act.

51 Prohibition notice preserved

- (1) This section applies to an existing direction or prohibition notice relating to recreational water activities health and safety.
- (2) The direction or prohibition notice continues in force and may be enforced under the repealed Act, section 118(4), as if the repealed Act had not been repealed.
- (3) In this section—
existing direction or prohibition notice relating to recreational water activities health and safety means a direction or prohibition notice—
 - (a) that was given by an inspector under the repealed Act, section 118 as in force immediately before the repeal; and
 - (b) that could be given by an inspector under applied WHS part 10, division 2 after the commencement of the subdivision.

52 Reviews and appeals

- (1) The repealed Act, part 11 continues to apply to a relevant decision made under the repealed Act as if the repealed Act had not been repealed.
- (2) Another provision of this part that would have applied to a matter if the final decision on a review or appeal under the repealed Act, part 11 had been made before the repeal of the repealed Act applies to the matter as if the final decision had been made before the repeal.
- (3) In this section—

relevant decision means a decision made under the repealed Act of a type that, after the commencement of this Act, could be made under this Act in relation to recreational water activities.

53 Relationship with transitional provisions under the Work Health and Safety Act 2011

- (1) This section applies if—
 - (a) this part makes provision for the transition of a particular matter from the repealed Act to that Act as if it, or a provision of it, had not been repealed or to the operation of this Act; and
 - (b) a provision in the *Work Health and Safety Act 2011*, part 17 makes provision for the transition of the same matter from the repealed Act to that Act as if it, or a provision of it, had not been repealed or to the operation of the *Work Health and Safety Act 2011*.
- (2) Despite section 4, the provision of this part applies to the matter and not the provision of the *Work Health and Safety Act 2011*, part 17.
- (3) Subject to subsection (2), this part does not limit the *Work Health and Safety Act 2011*, part 17 in relation to the operation of the repealed Act relating to recreational water activities health and safety.

Schedule 1 Regulation-making powers

section 45

1 Duties

- (1) Matters relating to the way in which duties imposed by this Act are to be performed.
- (2) Matters relating to the regulation or prohibition of stated activities or a stated class of activities to eliminate or minimise risks to health and safety—
 - (a) at places or a stated class of places where recreational water activities are provided; or
 - (b) by a stated class of persons on whom duties or obligations are imposed by this Act.
- (3) Imposing duties on persons in relation to any matter provided for under a regulation.

2 Incidents

Matters relating to incidents at a place where recreational water activities are provided including—

- (a) regulating or requiring the taking of any action to avoid an incident at the place or in the course of conducting a business or undertaking; and
- (b) regulating, requiring or prohibiting the taking of any action in the event of an incident at the place or in the conduct of a business or undertaking.

3 Plant, substances or structures

Matters relating to plant, substances or structures, including—

- (a) regulating the storage and handling of plant, substances and structures; and
- (b) regulating or requiring—

- (i) the examination, testing, labelling, maintenance or repair of plant and structures; or
- (ii) the examination, testing, analysis or labelling of any substance.

4 Hazards and risks

Matters relating to hazards and risks including—

- (a) the prescribing of standards relating to the use of or exposure to any physical, biological, chemical or psychological hazard; and
- (b) matters relating to safety cases, safety management plans and safety management systems (however described); and
- (c) matters relating to measures to control risks.

5 Records and notices

- (1) The keeping of records in relation to incidents.
- (2) The keeping of records of stated activities, matters or things to be kept by stated persons.
- (3) The giving of notice of or information about stated activities, matters or things to the regulator, an inspector or other stated person.

6 Forfeiture

Matters relating to—

- (a) costs of forfeiture and disposal of forfeited things; and
- (b) disposal of seized things and forfeited things.

7 Review of decisions

Matters relating to the review of decisions under a regulation including—

- (a) prescribing decisions as reviewable decisions for the purposes of applied WHS part 12 or for the purposes of a regulation; and
- (b) prescribing procedures for internal and external review of decisions under a regulation; and
- (c) conferring jurisdiction on a court or QCAT to conduct reviews authorised under a regulation.

Schedule 2 Dictionary

section 6

applied WHS, in relation to a provision, means that provision of the *Work Health and Safety Act 2011* as applied under this Act for the purposes of this Act.

approved code of practice means a code of practice approved under part 5, division 2.

category 1 offence see section 21.

category 2 offence see section 22.

category 3 offence see section 23.

causes, for part 2A, see section 25A(2).

condition includes limitation and restriction.

conduct, for part 2A, see section 25A(1).

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

corresponding law means—

- (a) a law of another State corresponding, or substantially corresponding, to this Act; or
- (b) a law of another State that is declared under a regulation to be a corresponding law, whether or not the law corresponds, or substantially corresponds, to this Act.

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 law.

dangerous incident, for part 3, see section 28.

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

document includes record.

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

executive officer, of a corporation, for part 2A, see section 25A(1).

health means physical and psychological health.

health and safety duty for recreational water activities see section 20.

inspector means an inspector under section 33.

notifiable incident see section 26.

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 State, Commonwealth or another State within the meaning of applied WHS section 247; or
- (c) an officer of a public authority within the meaning of applied WHS section 252;

other than an elected member of a local government acting in that capacity.

person conducting a business or undertaking see the *Work Health and Safety Act 2011*, section 5.

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.

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.

public authority means—

- (a) an authority or body, whether a body corporate or not, established or incorporated for a public purpose by a law of the State, another State or of the Commonwealth, including a body corporate incorporated under a law of the State, another State or of the Commonwealth in which the State, the other State or the Commonwealth has a controlling interest; or
- (b) a GOC; or
- (c) local government; or
- (d) a statutory body under the *Statutory Bodies Financial Arrangements Act 1982*.

reasonably practicable, in relation to a duty to ensure recreational water activities health and safety, see section 15.

recreational water activities health and safety means health and safety relating to the provision of recreational water activities by a person conducting a business or undertaking.

recreational water activities health and safety undertaking means an undertaking under applied WHS part 11.

recreational water activity see section 7.

regulator means the regulator under section 32.

senior officer, of a person conducting a business or undertaking, for part 2A, see section 25A(1).

serious injury or illness, for part 3, see section 27.

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 the Australian Consumer Law (Queensland).

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

waters means waters of any description at any place, whether natural or constructed.

Examples of waters—

river, stream, watercourse, canal, lake, rapids, waterfall, the sea, water slide, pool

worker see the *Work Health and Safety Act 2011*, section 7.