

NORTHERN TERRITORY OF AUSTRALIA

WORK HEALTH AND SAFETY (NATIONAL UNIFORM LEGISLATION) IMPLEMENTATION ACT 2011

Act No. 38 of 2011

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NORTHERN TERRITORY OF AUSTRALIA

Act No. 38 of 2011

An Act to provide for the implementation of the *Work Health and Safety (National Uniform Legislation) Act 2011*, and for other purposes

[Assented to 14 December 2011]
[Second reading 27 October 2011]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Work Health and Safety (National Uniform Legislation) Implementation Act 2011*.

2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

Part 2 Repeal

3 Repeal

The *Workplace Health and Safety Act 2007* (Act No. 31 of 2007) is repealed.

Part 3 Amendment of various laws

Division 1 Workers Rehabilitation and Compensation Act

4 Act amended

This Division amends the *Workers Rehabilitation and Compensation Act*.

5 Section 3 amended

- (1) Section 3(1), definitions *Executive Director, Judicial Registrar, managing magistrate* and *Registrar*

omit

- (2) Section 3(1)

insert (in alphabetical order)

acting in an official capacity, in relation to an inspector, means the inspector is exercising powers or performing functions under, or otherwise related to the administration of, this Act.

inspector means an inspector under section 7A.

registrar means:

- (a) the registrar of the Court; or
- (b) a judicial registrar of the Court.

- (3) Section 3(1), definition *appointed member*

omit

other than the Executive Director

insert

appointed under section 10(1)(b)

- (4) Section 3(1), definition *Authority*

omit

that continues under the *Workplace Health and Safety Act*

insert

continued under the *Work Health Administration Act*

- (5) Section 3(1), definition ***Court***, after "Court"

insert

continued under the *Work Health Administration Act*

6 Part 2, Division 1 heading inserted

After Part 2, heading

insert

Division 1 Authority

7 Section 6 amended

- (1) Section 6(1) and (3)

omit

- (2) Section 6(2)

omit

- (2) The Authority's functions include (for example) the following:

insert

- (1) The Authority has the following functions:

(aa) to administer this Act;

(ab) to monitor compliance with, and enforce, this Act;

(ac) to further the objects of this Act;

- (3) Section 6(1)(h) (*as renumbered*)

omit

Act.

insert

Act;

- (4) After section 6(1)(h) (*as renumbered*)

insert

- (i) to perform any other function conferred under this Act.

8 Section 7 replaced

Section 7

repeal, insert

7 Powers of Authority to obtain information

- (1) For performing its functions under this Act, the Authority may do one or more of the following:
 - (a) obtain relevant information from any persons as the Authority considers appropriate;
 - (b) consult with any persons as the Authority considers appropriate;
 - (c) make any inquiries as the Authority considers appropriate.
- (2) The Authority may perform its functions under subsection (1) in any way it considers appropriate.
- (3) Without limiting subsection (1)(a), the Authority may require a person to do one or more of the following:
 - (a) appear before the Authority at a specified time and place;
 - (b) answer questions asked by the Authority;
 - (c) produce documents to the Authority.
- (4) The Authority may require the person to give the answers on oath or verify the document by statutory declaration.
- (5) A requirement under subsection (3) or (4) must:
 - (a) be made in writing; and
 - (b) be accompanied by a statement informing the person that it is an offence not to comply with the requirement unless the person has a reasonable excuse.
- (6) A person must not, without reasonable excuse, fail to comply with a requirement under subsection (3) or (4).

Maximum penalty: 100 penalty units.

- (7) Without limiting subsection (6), it is a reasonable excuse for an individual to fail to comply with a requirement if doing so might tend to incriminate the individual.

9 Part 2, Division 2 inserted

After section 7, in Part 2

insert

Division 2 Inspectors

Subdivision 1 Appointment

7A Appointment of inspectors

- (1) An inspector under the *Work Health and Safety (National Uniform Legislation) Act* is an inspector for this Act.
- (2) The Authority may, in writing, appoint any of the following as an inspector:
 - (a) a public sector employee;
 - (b) an employee of a council constituted under the *Local Government Act*;
 - (c) the holder of a statutory office;
 - (d) a person in a class of persons prescribed by regulation.

7B Identity cards

- (1) The Authority must give each inspector an identity card that states the person's name and appointment as an inspector and includes any other matter prescribed by regulation.
- (2) For a person who is an inspector under section 7A(1), a single card may be given to the person for the purposes of both subsection (1) and section 157 of the *Work Health and Safety (National Uniform Legislation) Act*.
- (3) An inspector must produce his or her identity card for inspection on request when exercising a power under this Act.
- (4) If a person to whom an identity card has been issued ceases to be an inspector, the person must return the card to the Authority as soon as practicable.

7C Suspension and ending of appointment of inspector

- (1) The Authority may suspend or end the appointment of an inspector appointed under section 7A(2).

- (2) A person's appointment as an inspector under section 7A(2) ends if the person ceases to be eligible for appointment under that subsection.

Note for section 7C

A person who is an inspector under section 7A(1) may have his or her appointment under the Work Health and Safety (National Uniform Legislation) Act suspended or ended under section 159 of that Act.

Subdivision 2 Functions and powers

7D Functions of inspector

An inspector has the following functions:

- (a) to give information and advice about compliance with this Act;
- (b) to assess whether or not the provisions of this Act are being complied with;
- (c) to gather evidence of a suspected offence under this Act;
- (d) to assist the Authority in performing its functions;
- (e) to perform any other functions conferred under this Act.

7E Inspector subject to Authority's directions

- (1) An inspector is subject to the Authority's directions in the performance of the inspector's functions.
- (2) A direction under subsection (1) may be of a general nature or may relate to a specified matter or specified class of matter.

7F Exercise of powers

- (1) An inspector may only exercise a power under this Subdivision:
 - (a) for the purpose of performing the inspector's functions under section 7D(b) to (e); and
 - (b) if the inspector reasonably believes it is necessary to do so.
- (2) In exercising a power under this Subdivision, an inspector may:
 - (a) use any reasonable force; and
 - (b) be accompanied and assisted by other persons as the inspector reasonably considers necessary.

7G Power to require information

- (1) An inspector may, by written notice, require a person to do either or both of the following within the period specified in the notice:
 - (a) give to the inspector written answers to questions set out in the notice;
 - (b) produce to the inspector documents identified in the notice.
- (2) The inspector may, in the notice, require the person to verify the answers or document by statutory declaration.
- (3) A notice under subsection (1) must include a statement informing the person that it is an offence not to comply with the notice unless the person has a reasonable excuse.
- (4) A person must not, without reasonable excuse, fail to comply with a notice under subsection (1).

Maximum penalty: 100 penalty units

- (5) Without limiting subsection (4), it is a reasonable excuse for an individual to fail to comply with a notice under subsection (1) if doing so might tend to incriminate the individual.

7H Power of entry

- (1) An inspector may enter a place:
 - (a) with the consent of the occupier of the place; or
 - (b) in accordance with a warrant issued under section 7K; or
 - (c) if the place is a workplace and is not a place of residence:
 - (i) during normal working hours for that workplace; and
 - (ii) after having given the employer reasonable notice of the inspector's intention to enter the workplace and reasons for doing so.
- (2) An inspector seeking the consent of a person to enter a place must:
 - (a) give the person the reasons why entry is sought; and
 - (b) inform the person that the person may refuse to give consent; and
 - (c) show the inspector's identity card to the person.

- (3) Having entered a place under subsection (1), an inspector may remain at the place for as long as is reasonably necessary to enable the inspector to perform the inspector's functions.

7J General powers of inspector

- (1) An inspector who enters a place under section 7H may do one or more of the following:
- (a) inspect or examine the place or anything at the place;
 - (b) photograph, film or otherwise record the place or anything at the place;
 - (c) make copies of documents that are at the place or are produced to the inspector;
 - (d) take reasonable steps to secure or protect a document against damage or unauthorised removal or interference;
 - (e) take into the place and use any equipment or other things that are reasonably necessary to enable the inspector to exercise the inspector's powers under this Subdivision;
 - (f) make reasonable use of equipment, things or services at the place as reasonably necessary to enable the inspector to:
 - (i) retrieve or record a document; or
 - (ii) exercise any of the inspector's other powers under this Subdivision;
 - (g) require a person at the place to do one or more of the following:
 - (i) answer questions asked by the inspector;
 - (ii) produce documents to the inspector;
 - (iii) give the inspector reasonable help to exercise the inspector's powers under this Subdivision;
 - (h) if the entry to the place was effected in accordance with a warrant – anything authorised to be done by the warrant.
- (2) A requirement under subsection (1)(g) must be accompanied by a statement informing the person that it is an offence not to comply with the requirement unless the person has a reasonable excuse.

- (3) A person must not, without reasonable excuse, fail to comply with a requirement under subsection (1)(g).

Maximum penalty: 20 penalty units

7K Entry of place – search warrant

- (1) An inspector may apply to a magistrate, by information on oath, for a search warrant to enter a place for the purpose of exercising the inspector's powers under this Subdivision at the place.
- (2) The magistrate may issue a search warrant only if satisfied there are reasonable grounds for the inspector to exercise the inspector's powers at the place and the warrant is reasonably necessary.
- (3) The warrant authorises the inspector named in the warrant, and any other person assisting the inspector, to enter the place and to exercise the inspector's powers under this Subdivision.
- (4) The warrant must state:
- (a) the place for which it is issued; and
 - (b) the grounds (in general terms) on which it is granted; and
 - (c) the hours during which entry to the place is authorised or that the entry is authorised at any time of the day or night; and
 - (d) the date, within 14 days after the warrant's issue, on which the warrant ceases to have effect.
- (5) The inspector executing the warrant must produce the warrant for inspection if asked to do so by:
- (a) the occupier of the place; or
 - (b) if the place is a workplace – the employer; or
 - (c) any person at the place.

Subdivision 3 Offences in relation to inspectors

7L Obstruction of inspector

- (1) A person must not obstruct another person whom the person knows to be:
- (a) an inspector acting in an official capacity; or

(b) a person assisting an inspector acting in an official capacity.

Maximum penalty: 100 penalty units or imprisonment for
6 months.

(2) In this section:

obstruct includes hinder or resist.

7M Misleading information

(1) A person must not knowingly give to an inspector acting in an official capacity:

(a) misleading information; or

(b) a document containing misleading information.

Maximum penalty: 200 penalty units or imprisonment for
12 months.

(2) Subsection (1)(b) does not apply if the person, when giving the document:

(a) draws the misleading aspect of the document to the inspector's attention; and

(b) to the extent to which the person can reasonably do so – gives the inspector the information necessary to remedy the misleading aspect of the document.

(3) In this section:

misleading information means information that is misleading in a material particular or because of the omission of a material particular.

10 Section 9 amended

Section 9(d)

omit, insert

(d) to perform any other advisory functions relating to workers rehabilitation and compensation as the Minister directs.

11 Section 10 amended

Section 10(1)(a)

omit, insert

- (a) the person constituting the Authority under section 4(3) of the *Work Health Administration Act*, and

12 Section 13 amended

Section 13(4)(a)

omit

5

insert

not less than half of the number of

13 Section 72A inserted

After section 72, in Part 5, Division 3, Subdivision C

insert

72A Enforcement of entitlement to compensation

- (1) This section applies if compensation payable to a worker under section 71 has not been paid.
- (2) On application by or on behalf of the worker or his or her employer, the registrar must issue a certificate certifying that the compensation is payable and the amount that is outstanding.
- (3) The certificate may be filed in the Local Court.
- (4) On the filing of the certificate in the Local Court, the Clerk of the Local Court must enter judgment for the worker as if the Local Court had given judgment in favour of the worker for:
 - (a) the amount certified as being outstanding; and
 - (b) the amount of any fees paid:
 - (i) under this Act to obtain the certificate; or
 - (ii) under the *Local Court Act* for the filing of the certificate and entering of judgment.

14 Part 6 repealed

Part 6

repeal

15 Section 103A amended

Section 103A

insert (in alphabetical order)

Rules means the court rules as defined in section 3 of the *Work Health Administration Act*.

16 Section 104 amended

Section 104(1)

omit

For the purposes of the Court exercising its powers under section 94(1)(a), a

insert

A

17 Section 105 amended

Section 105

omit

shall

insert

of the Court must

18 Section 108 amended

(1) Section 108(1)

omit

the Registrar

insert

a registrar

- (2) Section 108(2), (3)(a) and (b), (5) and (7)

omit

Registrar

insert

registrar

19 Section 110A amended

- (1) Section 110A(1)

omit

- (2) Section 110A(2) and (3), after "this Act"

insert

and the *Work Health Administration Act*

20 Part 6A, Division 4, heading amended

Part 6A, Division 4, heading

omit

Registrar and Judicial Registrars

insert

registrars

21 Section 114A amended

- (1) Section 114A, heading, after "to"

insert

Court constituted by

- (2) Section 114A(1) and (2)

omit

the Registrar or a Judicial Registrar

insert

a registrar

- (3) Section 114A(1)
- omit*
- a magistrate of the Court
- insert*
- the Court constituted by a magistrate

- (4) Section 114A(2)
- omit*
- to a magistrate of the Court
- insert*
- under subsection (1)

22 Section 116 amended

- (1) Section 116(1)
- omit*
- a magistrate of the Court
- insert*
- the Court constituted by a magistrate

- (2) Section 116(1)
- omit*
- the magistrate
- insert*
- the Court

23 Section 121A amended

- Section 121A(1)(a)
- omit, insert*
- (a) that part of the administration costs of the Court associated with proceedings under this Act; and

24 Section 126A amended

- (1) Section 126A(2)(b)(i)
omit
under Part 6, Division 4
insert
in the Court
- (2) Section 126A(2)(b)(ii)
omit
under that Division

25 Section 170 amended

- Section 170(2)(b)
omit
or Part 6

26 Section 181 replaced

Section 181
repeal, insert

181 Protection from liability

- (1) A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise of a power or performance of a function as any of the following:
- (a) an inspector;
 - (b) a member of the Council;
 - (c) a member of the Scheme Monitoring Committee;
 - (d) a member of the Nominal Insurer.
- (2) Subsection (1) does not affect any liability the Territory or the Authority would, apart from that subsection, have for the act or omission.

(3) In this section:

exercise, of a power, includes the purported exercise of the power.

performance, of a function, includes the purported performance of the function.

27 Section 186B inserted

After section 186A

insert

186B Confidential information

(1) A person commits an offence if the person:

- (a) obtains information in the course of exercising a power or performing a function under this Act; and
- (b) engages in conduct that results in the disclosure of the information to someone else.

Maximum penalty: 200 penalty units or imprisonment for
 2 years.

(2) Subsection (1) does not apply if the person engages in the conduct:

- (a) in exercising a power or performing a function under this Act;
or
- (b) for legal proceeding arising out of the operation of this Act; or
- (c) with the consent of the person to whom the information relates.

Note for section 186B

Under sections 23 and 26 of the Criminal Code a person is not guilty of an offence if an act constituting the offence is done in the exercise of a right granted or recognised by law or in execution of the law or in obedience to, or in conformity with, the law.

28 Part 11 inserted

After section 196

insert

Part 11 Transitional matters for Work Health and Safety (National Uniform Legislation) Implementation Act 2011

197 Continuation of Council

The change in the constitution of the Council effected by the amendment of section 10 by the *Work Health and Safety (National Uniform Legislation) Implementation Act 2011* does not affect:

- (a) the continuity of the Council; or
- (b) the continuation in existence, force or operation of any act, matter or thing relating to the Council that was in existence, force or operation immediately before the commencement of Part 3, Division 1 of that Act.

Division 2 Dangerous Goods Act

29 Act amended

This Division amends the *Dangerous Goods Act*.

30 Section 4 amended

Section 4(3)

omit, insert

- (3) This Act does not apply in relation to an activity involving dangerous goods to the extent to which the activity is regulated under the *Work Health and Safety (National Uniform Legislation) Act*.
- (4) If there is an inconsistency between:
 - (a) a provision of this Act or regulations under this Act; and
 - (b) a provision of an overriding Act or overriding Regulations;the provision of the overriding Act or overriding Regulations prevails.

- (5) In this section:

overriding Act means:

- (a) the *Transport of Dangerous Goods by Road and Rail (National Uniform Legislation) Act*, or
- (b) the *Work Health and Safety (National Uniform Legislation) Act*.

overriding Regulations means regulations made under an overriding Act.

Division 3 Other laws

31 Other laws amended

- (1) Schedule 1 amends the Acts mentioned in it.
- (2) Schedule 2 amends the regulations mentioned in it.

Part 4 General matters

32 Transitional regulations

- (1) The Administrator may make regulations under this section.
- (2) A regulation may provide for a matter of a transitional nature because of the enactment of:
 - (a) the *Work Health and Safety (National Uniform Legislation) Act*, (including the making of regulations under that Act for the purposes of Schedule 1 to that Act); or
 - (b) the *Work Health Administration Act*; or
 - (c) this Act.
- (3) The regulation may have retrospective operation to a day not earlier than the commencement of this section.
- (4) However, to the extent to which the regulation has retrospective operation, it does not operate to the disadvantage of a person (other than the Territory or a Territory authority) by:
 - (a) decreasing the person's rights; or
 - (b) imposing liabilities on the person.
- (5) A regulation may modify the transitional provisions in the Acts to make provision in relation to anything that, in the Administrator's opinion, is not, or is not adequately or appropriately, dealt with in the transitional provisions in the Acts.

(6) In this section:

transitional provisions in the Acts means the following:

- (a) Part 15 of the *Work Health and Safety (National Uniform Legislation) Act*,
- (b) Part 5 of the *Work Health Administration Act*.

33 Continuation of repealed Act

(1) While this section remains in force:

- (a) the *Work Health and Safety (National Uniform Legislation) Act* does not apply in relation to mining operations; and
- (b) the *Workplace Health and Safety Act* continues to have effect in relation to mining operations as if that Act had not been repealed.

Note for subsection (1)

Section 34(3) provides for the expiry of this section.

(2) In this section:

mining operations means any of the following:

- (a) exploration for minerals;
- (b) mining;
- (c) processing of minerals, tailings, spoil heaps or waste dumps;
- (d) decommissioning or rehabilitation of land, plant or structures used in carrying out an activity mentioned in paragraphs (a) to (c);
- (e) operations incidental or related to an activity mentioned in paragraphs (a) to (d), including:
 - (i) the removal, handling, transport and storage of minerals, substances, contaminants and waste; and
 - (ii) the construction, operation, maintenance and removal of plant and structures;
- (f) operations for the care and maintenance of land, plant and structures used in carrying out an activity mentioned in paragraphs (a) to (e) during a suspension of the activity.

34 Expiry of Act

- (1) This Act, other than Parts 1 and 4, expires on the day after this section commences.
- (2) Section 32 and each regulation made under that section expire 2 years after the commencement of this section.
- (3) Section 33 expires on the expiry date declared under subsection (5).
- (4) Part 1 and this section expire on the later of the expiration of section 32 or the expiration of section 33.
- (5) The Administrator may, by *Gazette* notice, declare an expiry date for subsection (3) if satisfied that the continued operation of section 33 is no longer required.

Schedule 1 Other Acts amended

section 31(1)

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
<i>Court Security Act</i>		
section 4, definition <i>court</i> , paragraph (e)	whole paragraph	(e) the Work Health Court under Part 3 of the <i>Work Health Administration Act</i> , or
section 4, definition <i>court</i> , paragraphs (a) to (d), (f) and (g), at the end		or
<i>Fire and Emergency Act</i>		
section 3(1), definition <i>hazardous material</i>	whole definition	<i>hazardous material</i> means any of the following: (a) dangerous goods as defined in the <i>Dangerous Goods Act</i> , (b) a hazardous chemical as defined in the <i>Work Health and Safety (National Uniform Legislation) Regulations</i> , (c) a product or substance that has the potential to harm life, health, property or the environment.

Rail Safety Act

section 6, definition <i>occupational health and safety legislation</i> , paragraph (a)	whole paragraph	(a) the <i>Work Health and Safety (National Uniform Legislation) Act</i> ,
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Traffic Act

section 25(1)(b)	the <i>Dangerous Goods Act</i> ,	any of the following: (i) the <i>Dangerous Goods Act</i> , (ii) Schedule 1 of the <i>Work Health and Safety (National Uniform Legislation) Act</i> , (iii) the <i>Transport of Dangerous Goods by Road and Rail (National Uniform Legislation) Act</i> ,
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Schedule 2 Regulations amended

section 31(2)

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
<i>Building Regulations</i>		
Schedule 2, column 1	<i>Workplace Health and Safety Act</i>	<i>Work Health Administration Act</i>
Schedule 2, column 2	– to be used for the storage of dangerous goods as defined by the <i>Dangerous Goods Act</i> ;	– to be used for the storage of dangerous goods as defined: <ul style="list-style-type: none"> • in section 3 of the <i>Dangerous Goods Act</i>; or • under Schedule 1 of the <i>Work Health and Safety (National Uniform Legislation) Act</i>;
Schedule 2, column 3	<i>Workplace Health and Safety Regulations</i>	<i>Work Health and Safety (National Uniform Legislation) Regulations.</i>
<i>Fines and Penalties (Recovery) Regulations</i>		
Schedule 1, list of Acts		(<i>in alphabetical order</i>) <i>Work Health and Safety (National Uniform Legislation) Act</i>
Schedule 1, list of regulations	<i>Workplace Health and Safety Regulations</i>	<i>Work Health and Safety (National Uniform Legislation) Regulations</i>

Petroleum (Submerged Lands) (Application of Commonwealth Laws) Regulations

regulation 4(d)	whole paragraph	(c) the <i>Work Health and Safety (National Uniform Legislation) Act</i> .
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Public Interest Disclosure Regulations

regulation 8(2), definition <i>Work Health Authority</i>	section 7 of the <i>Workplace Health and Safety Act</i>	the <i>Work Health Administration Act</i>
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Rail Safety Regulations

regulation 3, definition <i>workplace safety officer</i>	whole definition	<i>WHS inspector</i> means an inspector under the <i>Work Health and Safety (National Uniform Legislation) Act</i> .
regulation 32(1)(b)(iii)	whole subparagraph	(iii) the <i>Work Health and Safety (National Uniform Legislation) Act</i> .
regulations 37(2)(c) and 45(2)(c)	workplace safety officer	WHS inspector

Superannuation Regulations

Schedule, item 16	<i>Workplace Health and Safety Act</i>	<i>Work Health Administration Act</i>
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Waste Management and Pollution Control (Administration) Regulations

Schedule 2, after "Dangerous Goods Act"		or the <i>Work Health and Safety (National Uniform Legislation) Act</i>
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