



ACT
Government

Chief Minister and Cabinet

International Labour Organisation

Labour Inspection (Agriculture) Convention, 1969 (No. 129)

Law and Practice Report of the ACT

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Instructions:

- This template is designed to assist you to provide the relevant information for the purpose of assessing the extent to which your jurisdiction complies with the Labour Inspection (Agriculture) Convention (C129).
- Please be guided by the comments under “Note”. In some cases you are referred to provisions of the *Labour Inspection Convention, 1947* (No. 81) which was reported on last year as part of the Article 22 reporting process. Your responses in that report may adequately demonstrate compliance with the corresponding provisions of Convention 129. In some cases further information specific to the agriculture industry may be required.
- When describing legislation, please do not reproduce large sections of Acts and Regulations – please refer to the relevant provisions and then summarise them in prose
- In some cases responses from the commonwealth law and practice report have been provided to provide further guidance about how compliance might be demonstrated. Note that these responses are drafts only and further changes may be made before the commonwealth report is finalised
- Safe Work Australia have provided information on the content of the model *Work Health and Safety (WHS) Act* relevant to the Convention. This information is included below under relevant articles.

Overview

The Australian Capital Territory (ACT) regards itself as compliant with the Labour Inspection (Agriculture) Convention, 1969 (No. 129). Labour inspection services for employers and workers in the ACT agricultural industry as set out in the Convention are provided for by both the Commonwealth and Territory Governments.

The Commonwealth *Fair Work Act 2009* applies wholly to the Territory and is enforced by the Fair Work Ombudsman and Fair Work Inspectors. As set out in further detail by the Commonwealth, this legal framework provides for the industrial rights and entitlements of workers, employers and their respective representatives in the agricultural industry.

The ACT provides for the regulation and inspection of work health and safety in all industries through the *Work Health and Safety Act 2011* and Work Safety Regulation 2011. These laws cover a broad range of businesses and undertakings and protect workers outside the traditional employment relationship, including apprentices and self-employed persons. These laws are regulated by WorkSafe ACT and its inspectors in accordance with a public Compliance and Enforcement Policy and Prosecution Policy of the Director of Public Prosecutions.

As inspectors are officials of the ACT Government Public Service, they must comply with the values and Code of Conduct set out in the *Public Sector Management Act 1994* and associated Standards in exercising their statutory powers. Exercise of their powers under the Work Health and Safety Act 2012 must also be consistent with provisions that ensure independent and fair application of the law, such as those dealing with apparent and perceived conflicts of interest. In addition, relevant processes and entitlements for the engagement of inspectors are set out in the Justice and Community Services Directorate Enterprise Agreement 2011-14. The *Crimes Act 1900* (ACT) is also relevant to the conduct of inspectors.

WorkSafe ACT regulates work health and safety in all industries through planned, proactive and responsive inspection regimes. The activities of the regulator across all industries is

structured and prioritised according to a matrix of factors. This includes notifiable incidents, public reports and relevant safety and compensation data for specific industries and hazards. This regime also takes into account industries and hazards selected for specific attention at a national level.

In light of the low number of employers and workers in the agricultural industry in the Territory it has not been a focus of compliance and enforcement action to date. That said, WorkSafe ACT will continue to respond to specific employers and hazards brought to its attention.

Article 1

1. In this Convention the term ***agricultural undertaking*** means undertakings and parts of undertakings engaged in cultivation, animal husbandry including livestock production and care, forestry, horticulture, the primary processing of agricultural products by the operator of the holding or any other form of agricultural activity.
2. Where necessary, the competent authority shall, after consultation with the most representative organisations of employers and workers concerned, where such exist, define the line which separates agriculture from industry and commerce in such a manner as not to exclude any agricultural undertaking from the national system of labour inspection.
3. In any case in which it is doubtful whether an undertaking or part of an undertaking is one to which this Convention applies, the question shall be settled by the competent authority.

Note:

Please indicate whether all agricultural undertakings listed in paragraph one are covered by inspection regimes or whether any types of agricultural undertakings are excluded from the scope of the inspection regimes.

ACT response:

The work health and safety inspection regime in the Territory, under the *Work Health and Safety Act 2011* and Work Health and Safety Regulation 2011, covers all agricultural undertakings in the Territory without any of the above exclusions.

Article 2

In this Convention the term *legal provisions* includes, in addition to laws and regulations, arbitration awards and collective agreements upon which the force of law is conferred and which are enforceable by labour inspectors.

Article 3

Each Member of the International Labour Organisation for which this Convention is in force shall maintain a system of labour inspection in agriculture.

Note:

Please refer to Articles 1 and 2 of the C81 report. Please add any additional available information about how the inspection regime operates in practice specific to the Agricultural Industry.

Commonwealth response:

The Commonwealth system of labour inspection is provided by the *Fair Work Act 2009* (FW Act) and the *Fair Work Regulations 2009* (FW Regs). Part 5-2 of the FW Act establishes the Office of the Fair Work Ombudsman, and confers powers and functions on the Fair Work Ombudsman and Fair Work Inspectors.

The Office of the Fair Work Ombudsman is responsible for providing education, assistance and advice about the Commonwealth workplace relations system. In addition, the Fair Work Ombudsman is also responsible for impartially enforcing compliance with the FW Act and fair work instruments.

The Fair Work Ombudsman appoints Fair Work Inspectors to provide education, assistance and advice to employer and employees, and to investigate and enforce compliance with relevant Commonwealth workplace laws and fair work instruments.

The Fair Work Ombudsman provides labour inspection services nationally, including across the agriculture industry. These activities include:

- providing education, assistance and advice regarding rights and entitlements
- conducting targeted education campaigns in industries and regions
- conducting compliance audits
- investigating workplace complaints
- providing assistance in resolving workplace complaints
- investigating suspected contraventions of relevant Commonwealth workplace laws and fair work instruments
- taking steps to enforce relevant Commonwealth workplace laws and fair work instruments through the court system (where necessary).

ACT response:

The ACT's work health and safety (WHS) inspection system supplements the Commonwealth system of labour inspection, which has full coverage of Territory agricultural undertakings. It comprises, for WHS, the WHS Act, enforced by Work Safe ACT as the relevant regulator responsible for compliance and enforcement.

The agricultural industry is not inspected differently to any other business or undertaking.

Article 4

The system of labour inspection in agriculture shall apply to agricultural undertakings in which work employees or apprentices, however they may be remunerated and whatever the type, form or duration of their contract.

Note:

Please confirm that the inspection regime discussed under Article 3 covers employees and apprentices in the agricultural industry and operates irrespective of the nature of the employee's and apprentice's contract of employment.

Commonwealth response:

The Fair Work Ombudsman's jurisdiction covers all employees and apprentices within the national workplace relations system. This includes any agricultural undertakings that are considered national system employers.

ACT response:

The ACT's work health and safety inspection regime covers all workers including employees, apprentices, work experience students and volunteers.

Section 7 of the *Work Health and Safety Act 2011* defines worker to include an employee, a contractor or subcontractor, an employee of a contractor or subcontractor, an employee of a labour hire company who has been assigned to work in the person's business or undertaking, an outworker, an apprentice or trainee, a student gaining work experience, and a volunteer.

Article 5

1. Any Member ratifying this Convention may, in a declaration accompanying its ratification, undertake also to cover by labour inspection in agriculture one or more of the following categories of persons working in agricultural undertakings:

(a) tenants who do not engage outside help, sharecroppers and similar categories of agricultural workers;

(b) persons participating in a collective economic enterprise, such as members of a co-operative;

(c) members of the family of the operator of the undertaking, as defined by national laws or regulations.

2. Any Member which has ratified this Convention may subsequently communicate to the Director-General of the International Labour Office a declaration undertaking to cover one or more of the categories of persons referred to in the preceding paragraph which are not already covered in virtue of a previous declaration.

3. Each Member which has ratified this Convention shall indicate in its reports under article 22 of the Constitution of the International Labour Organisation to what extent effect has been given or is proposed to be given to the provisions of the Convention in respect of such of the categories of persons referred to in paragraph 1 of this Article as are not covered in virtue of a declaration.

Note:

Please indicate whether the inspection regime described under Article 3 includes or excludes any of the categories of persons described in paragraph one.

Commonwealth response:

The Fair Work Ombudsman's jurisdiction covers all employees who are employed by a national system employer.

Genuine independent contractors are not covered by the FW Act.

ACT response:

All businesses and undertakings and their workers are covered by the work health and safety inspection regime in the Territory. Under Section 5 of the *Work Health and Safety Act 2011*, this covers all operations, whether conducted by a natural person alone, or with others, and irrespective of whether it is conducted for profit or gain.

Article 6

1. The functions of the system of labour inspection in agriculture shall be--

(a) to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work, such as provisions relating to hours, wages, weekly rest and holidays, safety, health and welfare, the employment of women, children and young persons, and other connected matters, in so far as such provisions are enforceable by labour inspectors;

(b) to supply technical information and advice to employers and workers concerning the most effective means of complying with the legal provisions;

(c) to bring to the notice of the competent authority defects or abuses not specifically covered by existing legal provisions and to submit to it proposals on the improvement of laws and regulations.

2. National laws or regulations may give labour inspectors in agriculture advisory or enforcement functions regarding legal provisions relating to conditions of life of workers and their families.

3. Any further duties which may be entrusted to labour inspectors in agriculture shall not be such as to interfere with the effective discharge of their primary duties or to prejudice in any way the authority and impartiality which are necessary to inspectors in their relations with employers and workers.

Note:

Please refer to Article 3 of the C81 report.

Model WHS Act

Through the Council of Australian Governments (COAG) National Reform Agenda, an *Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety* (IGA) is achieving harmonisation of the current work health and safety legislative framework in Australia.

The objects of harmonising work health safety laws through a model framework are:

- to protect the health and safety of workers
- to improve safety outcomes in workplaces
- to reduce compliance costs for business, and
- to improve efficiency for regulatory agencies.

The IGA included a commitment to implement the new harmonised framework by 1 January 2012.

This process has resulted in four components:

- the model Work Health and Safety Act (WHS Act)
- the model Work Health and Safety Regulations (WHS Regulations)
- model Codes of Practice, and
- model compliance and enforcement policies.

The model WHS Act includes:

- reporting requirements for ‘notifiable incidents’ such as the serious illness, injury or death of persons and dangerous incidents arising out of the conduct of a business or undertaking
- provision for enforcement and compliance including a compliance role for work health and safety inspectors, and
- regulation-making powers and administrative processes including mechanisms for improving cross-jurisdictional cooperation.

Section 152 of the model WHS Act outlines the functions of the regulator. These are:

- to advise and make recommendation to the Minister and report on the operations and effectiveness of the Act
- to monitor and enforce compliance with the Act
- to provide advice and information on work health and safety to duty holders under the Act and to the community
- to collect, analyse and publish statistics relating to work health and safety
- to foster a co-operative, consultative relationship between duty holders and the person to whom they owe duties and their representatives in relation to work health and safety matters
- to promote and support education and training on matters relating to work health and safety
- to engage in, promote and co-ordinate the sharing of information to achieve the object of the Act, including the sharing of information with a corresponding regulator
- to conduct and defend proceedings under the Act before a court or tribunal, and
- any other function conferred on the regulator by the Act.

Section 155 of the model WHS Act provides regulators with powers to obtain information, documents or evidence if it reasonably believes that a person is capable of doing so or if it will assist the regulator to monitor or enforce compliance with the Act.

Section 156 of the model WHS Act outlines that the regulator may, by instrument, appoint any of the following as an inspector:

- A public servant
- An employee of a public authority
- The holder of a statutory office
- A person who is appointed as an inspector under a corresponding WHS law, or
- A person in a prescribed class of persons.

Section 160 of the model WHS Act outlines the functions and powers of inspectors. These are:

- to provide information and advice about compliance with the Act
- to assist in the resolution of:
 - work health and safety issues at workplaces
 - issues related to access to a workplace by an assistant to a health and safety representative, and

- issues related to the exercise or purported exercise of a right of entry under Part 7 of the Act
- to review disputed provisional improvement notices
- to require compliance with the Act through the issuing of notices
- to investigate contraventions of the Act and assist in the prosecution of offences, and
- to attend coronial inquests in relation to work-related deaths and examine witnesses.

Commonwealth Response:

Pursuant to Part 5-2 of the FW Act, functions of the Fair Work Ombudsman include:

- offering a single point of contact for employers and employees to get accurate and timely advice and information about Australia’s workplace relations system;
- promoting and monitoring compliance with the FW Act and fair work instruments including through the provision of education, assistance and advice to employees, employers, outworkers and outworker entities and organisations, and producing best practice guidelines;
- investigating complaints or suspected contraventions of workplace laws, awards and agreements;
- conducting wide-ranging targeted education and compliance campaigns in industries which, for instance, have a high level of non-compliance, or a high proportion of vulnerable workers, or that have employers who have repeatedly contravened workplace laws;
- instituting proceedings in a court or with Fair Work Australia to enforce the FW Act or fair work instruments;
- referring matters to relevant authorities; and
- representing employees or outworkers who are, or may become, parties to court or Fair Work Australia proceedings.

Fair Work Inspectors provide education, assistance and advice to employers and employees regarding their obligations and entitlements. Fair Work Inspectors are also empowered under Part 5-2, Division 3 of the FW Act to investigate a range of workplace relations matters, including, but not limited to, minimum employment standards as set out in the Act and entitlements under modern awards.

These functions of the Fair Work Ombudsman’s labour inspection service are applied across industries, including the agricultural industry.

There are no other duties which are entrusted to Fair Work Inspectors either under the FW Act or otherwise that interfere with the effective discharge of their primary duties.

ACT response:

The *Work Health and Safety Act 2011* (WHS Act) includes:

- reporting requirements for ‘notifiable incidents’ such as the serious illness, injury or death of persons and dangerous incidents arising out of the conduct of a business or undertaking;

- provision for enforcement and compliance including a compliance role for work health and safety inspectors; and
- regulation-making powers and administrative processes (including mechanisms for improving cross-jurisdictional cooperation).

Part 2.1 of the WHS Act lists the functions of the Work Safety Council, which includes to advise the Minister on matters relating to work safety, and to inquire into and report to the Minister on matters referred to the council by the Minister in relation to work safety.

Part 2.2 of the WHS Act provides the Work Safe Commissioner with the function of undertaking research, and develop educational and other programs, for the purpose of promoting work safety.

Section 152 of the WHS Act outlines the functions of the regulator. These are:

- to advise and make recommendation to the Minister and report on the operations and effectiveness of the Act
- to monitor and enforce compliance with the Act
- to provide advice and information on work health and safety to duty holders under the Act and to the community
- to collect, analyse and publish statistics relating to work health and safety
- to foster a co-operative, consultative relationship between duty holders and the person to whom they owe duties and their representatives in relation to work health and safety matters
- to promote and support education and training on matters relating to work health and safety
- to engage in, promote and co-ordinate the sharing of information to achieve the object of the Act, including the sharing of information with a corresponding regulator
- to conduct and defend proceedings under the Act before a court or tribunal, and
- any other function conferred on the regulator by the Act.

Section 155 of the WHS Act provides regulators with powers to obtain information, documents or evidence if it reasonably believes that a person is capable of doing so or if it will assist the regulator to monitor or enforce compliance with the Act.

Section 160 of the WHS Act outlines the functions and powers of inspectors. These are:

- to provide information and advice about compliance with the Act
- to assist in the resolution of:
 - work health and safety issues at workplaces
 - issues related to access to a workplace by an assistant to a health and safety representative, and
 - issues related to the exercise or purported exercise of a right of entry under Part 7 of the Act
- to review disputed provisional improvement notices
- to require compliance with the Act through the issuing of notices
- to investigate contraventions of the Act and assist in the prosecution of offences, and
- to attend coronial inquests in relation to work-related deaths and examine witnesses.

All of the above apply across all industries, including agriculture. There are no other duties which are entrusted to WHS inspectors either under the WHS Act or otherwise that interfere with the effective discharge of their primary duties.

Article 7

1. So far as is compatible with the administrative practice of the Member, labour inspection in agriculture shall be placed under the supervision and control of a central body.
2. In the case of a federal State, the term **central body** may mean either one at federal level or one at the level of a federated unit.
3. Labour inspection in agriculture might be carried out for example--
 - (a) by a single labour inspection department responsible for all sectors of economic activity;
 - (b) by a single labour inspection department, which would arrange for internal functional specialisation through the appropriate training of inspectors called upon to exercise their functions in agriculture;
 - (c) by a single labour inspection department, which would arrange for internal institutional specialisation by creating a technically qualified service, the officers of which would perform their functions in agriculture; or
 - (d) by a specialised agricultural inspection service, the activity of which would be supervised by a central body vested with the same prerogatives in respect of labour inspection in other fields, such as industry, transport and commerce.

Note:

Please refer to Article 4 of the C81 report.

Commonwealth Response:

The authority under whose supervision and control the system of labour inspection is placed is the Fair Work Ombudsman, established pursuant to the FW Act.

The Fair Work Ombudsman has operational responsibility under the FW Act for the delivery of labour inspection across the vast majority of Australian workplaces. As discussed above, this includes the investigation into any act or practice that may be contrary to the FW Act, a fair work instrument or a safety net contractual requirement. The Fair Work Ombudsman is the entity responsible for the appointment of Fair Work Inspectors, who are authorised to carry out compliance powers in line with the FW Act.

The Fair Work Ombudsman is a statutory appointment and is therefore independent of any government agency or over-arching department. The FW Act specifies instances where the Fair Work Ombudsman may be subject to direction by the Minister for Employment, Education and Workplace Relations.

The Fair Work Ombudsman is also the entity responsible under the FW Act for providing education, assistance and advice to employees, employers, outworkers and organisations.

ACT response:

ACT labour inspection of work health and safety (WHS) matters is under the control of the ACT Government through WHS inspectors that are part of the ACT Public Service. A single regime applies to all sectors of economic activity.

Article 8

1. The labour inspection staff in agriculture shall be composed of public officials whose status and conditions of service are such that they are assured of stability of employment and are independent of changes of government and of improper external influences.

2. So far as is compatible with national laws or regulations or with national practice, Members may include in their system of labour inspection in agriculture officials or representatives of occupational organisations, whose activities would supplement those of the public inspection staff; the persons concerned shall be assured of stability of tenure and be independent of improper external influences.

Note:

Please refer to Article 6 of the C81 report.

Model WHS Act

Section 156 of the model WHS Act outlines that the regulator may, by instrument, appoint any of the following as an inspector:

- A public servant
- An employee of a public authority
- The holder of a statutory office
- A person who is appointed as an inspector under a corresponding WHS law, or
- A person in a prescribed class of persons.

Section 158 outlines the accountability of inspectors.

Commonwealth Response:

The Fair Work Ombudsman is an independent, public official appointed by the Governor-General under the FW Act. The Office of the Fair Work Ombudsman is an independent statutory authority established by the FW Act and is responsible for providing education, assistance and advice about the Commonwealth workplace relations system. In addition, the Fair Work Ombudsman is also responsible for impartially enforcing compliance with the FW Act and fair work instruments.

Fair Work Ombudsman employees are employed in the Australian Public Service (APS) under the Commonwealth *Public Service Act 1999*. The majority of Fair Work Inspectors are employed under the *Office of the Fair Work Ombudsman Enterprise Agreement 2011 - 2014*. The Fair Work Ombudsman Enterprise Agreement does not assure stability of employment; however, it includes clear provisions outlining conditions of service, redundancy entitlements, termination procedures, and dispute resolution.

Fair Work Inspectors are government officials appointed by the Fair Work Ombudsman under the *Fair Work Act 2009*. Before appointing a person a Fair Work Inspector, the Fair Work

Ombudsman must be satisfied that a person is of good character. Furthermore, Fair Work Inspectors adhere to the APS Code of Conduct and APS Values in all investigations.

ACT response:

In practice, all ACT work health and safety inspectors are public servants appointed under Section 156 of the *Work Health and Safety Act 2011* (WHS Act). These inspectors are employed with the conditions of service and status of public servants under the *Public Sector Management Act 1994* (PSM Act) and have statutory powers set out in the WHS Act. Their employment is unaffected by both changes of government and improper external influence.

An appropriate and robust system for declaring and dealing with real and perceived conflicts of interest is provided for, including compliance with the values and Code of Conduct set out in the PSM Act. Specific terms of employment for these inspectors are set out in the current ACT Government Justice and Community Safety Directorate Enterprise Agreement.

The ACT Work Safety Council (the Council), established under Part 2.1 of the WHS ACT, advises the Minister for Industrial Relations on matters relating to work safety, workers compensation and dangerous substances legislation, approval of code of practices and protocols, education and training, and promotion of work safety. The Minister for Industrial Relations appoints members to the Council. The Council is comprised of thirteen members; four members representing employees, four members representing employers, four members appointed by the Minister and the ACT Work Safety Commissioner.

Article 9

1. Subject to any conditions for recruitment to the public service which may be prescribed by national laws or regulations, labour inspectors in agriculture shall be recruited with sole regard to their qualifications for the performance of their duties.
2. The means of ascertaining such qualifications shall be determined by the competent authority.
3. Labour inspectors in agriculture shall be adequately trained for the performance of their duties and measures shall be taken to give them appropriate further training in the course of their employment.

Note:

Please refer to Article 7 of the C81 report.

Model WHS Act

Section 156 of the model WHS Act outlines that the regulator may, by instrument, appoint any of the following as an inspector:

- A public servant
- An employee of a public authority
- The holder of a statutory office
- A person who is appointed as an inspector under a corresponding WHS law, or
- A person in a prescribed class of persons.

Commonwealth Response:

Suitably qualified Fair Work Inspectors are recruited through open and transparent selection processes based on the merit principle as described in Section 10 of the *Public Service Act 1999*. Subsection 10(2) of the Act provides that a decision relating to engagement or promotion is based on merit if:

- (a) an assessment is made of the relative suitability of the candidates for the duties, using a competitive selection process;
- (b) the assessment is based on the relationship between the candidates' work-related qualities and the work-related qualities genuinely required for the duties;
- (c) the assessment focuses on the relative capacity of the candidates to achieve outcomes related to the duties; and
- (d) the assessment is the primary consideration in making the decision.

Fair Work Inspectors are trained through comprehensive induction and ongoing training programs. This includes training on workplace relations laws and their powers as inspectors. Furthermore, Fair Work Inspectors receive specific investigation skills training, such as investigative techniques and communication skills.

ACT response:

Suitably qualified work health and safety (WHS) inspectors are recruited through open and transparent selection processes based on the merit principle as described in Section 8 of the *Public Sector Management Act 1994*, Public Sector Management Standards and processes set out in the ACT Government Justice and Community Safety Directorate Enterprise Agreement.

Recruitment is undertaken with reference to classification structure in Enterprise Agreement, and qualifications, training and experience determined by the ACT, as necessary and desirable to fulfil their role under the *Work Health and Safety Act 2011*(WHS Act).

Training is provided to WHS inspectors to ensure effective performance of their responsibilities and powers under the WHS Act, including ongoing training in specific skills and subject matter throughout the course of their engagement.

Article 10

Both men and women shall be eligible for appointment to the labour inspection staff in agriculture; where necessary, special duties may be assigned to men and women inspectors.

Note:

Please refer to Article 8 of the C81 report.

Commonwealth Response:

Both men and women are eligible for appointment as Fair Work Inspectors and their employment is based entirely on the merit principle as described in Section 10 of the *Public Service Act 1999*.

ACT response:

Both men and women are eligible for appointment as work health and safety inspectors and their employment is based entirely on the merit principle in accordance with Section 8 of the *Public Sector Management Act 1994*.

Article 11

Each Member shall take the necessary measures to ensure that duly qualified technical experts and specialists, who might help to solve problems demanding technical knowledge, are associated in the work of labour inspection in agriculture in such manner as may be deemed most appropriate under national conditions.

Note:

Please describe how/whether technical experts and specialists are involved with labour inspection in agriculture, including in an advisory capacity.

Commonwealth Response:

Technical experts and specialists may become involved in labour inspection, for example in order to provide advice with respect to the classification of work that is undertaken by an employee or groups of employees.

ACT response:

Technical experts or specialist may be engaged to provide expertise or advice on inspection of the agriculture industry on those occasions where that is established to be necessary and appropriate.

Article 12

1. The competent authority shall make appropriate arrangements to promote effective co-operation between the inspection services in agriculture and government services and public or approved institutions which may be engaged in similar activities.

2. Where necessary, the competent authority may either entrust certain inspection functions at the regional or local level on an auxiliary basis to appropriate government services or public institutions or associate these services or institutions with the exercise of the functions in question, on condition that this does not prejudice the application of the principles of this Convention.

Note:

Please refer to Article 5 of the C81 report. Where possible, please provide specific examples relevant to agricultural workplaces.

Model WHS Act

Through the Council of Australian Governments (COAG) National Reform Agenda, an *Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety* (IGA) is achieving harmonisation of the current work health and safety legislative framework in Australia.

The objects of harmonising work health safety laws through a model framework are:

- to protect the health and safety of workers
- to improve safety outcomes in workplaces
- to reduce compliance costs for business, and
- to improve efficiency for regulatory agencies.

Section 152 of the model WHS Act outlines the functions of the regulator including:

- to advise and make recommendation to the Minister and report on the operations and effectiveness of the Act
- to engage in, promote and co-ordinate the sharing of information to achieve the object of the Act, including the sharing of information with a corresponding regulator.

Commonwealth Response:

The Fair Work Ombudsman has established arrangements with relevant government agencies in order to ensure the services provided by the agency's inspectorate are consistent with a whole-of-government approach to providing high quality service to Australian employees and employers.

Collaboration between the Fair Work Ombudsman and other government agencies often takes place where there are complementary areas of legislative responsibility. For example, the Fair Work Ombudsman works closely with the Department of Immigration and Citizenship to ensure overseas

workers are aware of their workplace rights. This often includes co-operative education and compliance activities.

The Fair Work Ombudsman has also established productive working relations with the Australian Federal Police, the Australian Securities and Investments Commission, the Australian Taxation Office and the Australian Human Rights Commission. Where a Fair Work Inspector identifies an issue outside of the Fair Work Ombudsman's jurisdiction, the Fair Work Ombudsman may refer that matter to a relevant authority.

ACT response:

Section 152 of the *Work Health and Safety Act 2011* (WHS Act) outlines the functions of the regulator (WorkSafe ACT) including:

- to advise and make recommendation to the Minister and report on the operations and effectiveness of the Act; and
- to engage in, promote and co-ordinate the sharing of information to achieve the object of the Act, including the sharing of information with a corresponding regulator.

The ACT work health and safety (WHS) regulator exercises its functions under the WHS Act in engaging in inspection services, particularly across the most proximate jurisdictional borders (New South Wales and the Commonwealth). This coordination is replicated in respect of policy and legislative issues through national, officer-level bodies established under Safe Work Australia.

WorkSafe ACT has established productive working relationships with related Commonwealth bodies including the Fair Work Ombudsman and the Australian Federal Police. Effective coordination arrangements are also in place with other ACT Government regulators including inspectorates dealing with long service leave, occupational licensing, building and construction standards.

Article 13

The competent authority shall make appropriate arrangements to promote collaboration between officials of the labour inspectorate in agriculture and employers and workers, or their organisations where such exist.

Note:

Please refer to Article 5 of the C81 report. Where possible, please provide specific examples relevant to agricultural workplaces.

Model WHS Act

Through the Council of Australian Governments (COAG) National Reform Agenda, an *Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety* (IGA) is achieving harmonisation of the current work health and safety legislative framework in Australia.

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Section 152 of the model WHS Act outlines the functions of the regulator including:

- to provide advice and information on work health and safety to duty holders under the Act and to the community
- to foster a co-operative, consultative relationship between duty holders and the person to whom they owe duties and their representatives in relation to work health and safety matters
- to promote and support education and training on matters relating to work health and safety, and
- to engage in, promote and co-ordinate the sharing of information to achieve the object of the Act, including the sharing of information with a corresponding regulator.

Commonwealth Response:

The Fair Work Ombudsman regularly liaises with employer and employee representative bodies. The Fair Work Ombudsman also maintains a working relationship with peak union and employer associations such as the Australian Council of Trade Unions, Australian Industry Group and the Australian Chamber of Commerce and Industry.

For example, relevant employer associations and unions are contacted prior to the commencement of Fair Work Ombudsman targeted education and compliance campaigns. The organisations are often provided with the opportunity to both comment on, and participate in, the educative phase of the campaign.

Furthermore, the Horticulture Industry Shared Compliance program was undertaken in 2010 in partnership with major industry and employee groups within agriculture. Initiatives of this program included jointly branded publications in partnership with the Australian Industry Group, the Australian Worker's Union, the Horticulture Australia Council and the National Farmer's Federation, and an Australia-wide employer seminar program was rolled out through industry partners.

ACT response:

WorkSafe ACT, the regulator of work health and safety (WHS) matters in the ACT, has collaborative arrangements in place between inspectors, employers and workers in the ACT. This is principally conducted through the ACT Work Safety Council, an advisory body comprised of peak employer, worker and community representatives established under the WHS Act. In addition, WorkSafe ACT establishes stakeholder reference groups where that is necessary and appropriate to provide advice and feedback on specific hazards and industries in the Territory.

Article 14

Arrangements shall be made to ensure that the number of labour inspectors in agriculture is sufficient to secure the effective discharge of the duties of the inspectorate and is determined with due regard for--

- (a) the importance of the duties which inspectors have to perform, in particular--
- (i) the number, nature, size and situation of the agricultural undertakings liable to inspection;
 - (ii) the number and classes of persons working in such undertakings; and
 - (iii) the number and complexity of the legal provisions to be enforced;
- (b) the material means placed at the disposal of the inspectors; and
- (c) the practical conditions under which visits of inspection must be carried out in order to be effective.

Note:

Please refer to Article 10 of the C81 report. Please update this information, and provide further detail specifically relating to the agricultural industry.

Commonwealth Response:

As at 30 June 2011, there were 426 Fair Work Inspectors working out of 53 offices across Australia.

Of the 53 metropolitan and regional office locations, 43 are situated outside of metropolitan areas. 26 offices are State Partner Offices.

All local offices are sufficiently equipped with the requirements of the service and are accessible to all persons. Transport facilities, mobile phones, remote access to the Fair Work Ombudsman's directories and laptops are made available for the performance of duties offsite as required.

ACT response:

The ACT has made arrangements for the engagement of inspectors to perform the statutory role of inspectors under the *Work Health and Safety Act 2011*. As at April 2012, WorkSafe ACT has 28 inspectors. Six of these are in managerial roles and perform limited field based activities and 4 are dedicated to workers compensation activities.

Given the limited geographical footprint of the ACT, all inspectors work from a central location in Canberra. This Office is equipped with sufficient resources and facilities to allow inspectors to perform their role and these are accessible to all persons. Inspectors have access to pool cars, are provided with mobile phones and a range of personal protective equipment. They are reimbursed for any work related travel costs incurred in undertaking their duties, including duties out of normal business hours.

Article 15

1. The competent authority shall make the necessary arrangements to furnish labour inspectors in agriculture with--

- (a) local offices so located as to take account of the geographical situation of the agricultural undertakings and of the means of communication, suitably equipped in accordance with the requirements of the service, and, in so far as possible, accessible to the persons concerned;
- (b) the transport facilities necessary for the performance of their duties in cases where suitable public facilities do not exist.

2. The competent authority shall make the necessary arrangements to reimburse to labour inspectors in agriculture any travelling and incidental expenses which may be necessary for the performance of their duties.

Note:

Please refer to Article 11 of the C81 report. Please update this information, and provide further detail specifically relating to the agricultural industry.

Commonwealth Response:

As at 30 June 2011, there were 426 Fair Work Inspectors working out of 53 offices across Australia. 43 of those offices are situated outside of metropolitan areas.

All local offices are sufficiently equipped with the requirements of the service and are accessible to all persons. Fair Work Inspectors' travelling and incidental expenses, incurred in the course of their duties, are addressed by the Fair Work Ombudsman under its travel policy.

Additionally, the Fair Work Ombudsman provides a remote localities allowance to employees in three remote localities, which recognises the additional costs they incur.

ACT response:

As at April 2012, WorkSafe ACT has 28 inspectors. Six of these are in managerial roles and perform limited field based activities and 4 are dedicated to workers compensation activities. Given the limited geographical footprint of the ACT, all inspectors work from a central location in Canberra. This Office is equipped with sufficient resources and facilities to allow inspectors to perform their role and these are accessible to all persons. Inspectors have access to pool cars, are provided with mobile phones and a range of personal protective equipment. They are reimbursed for any work related travel costs incurred in undertaking their duties, including duties out of normal business hours.

Article 16

1. Labour inspectors in agriculture provided with proper credentials shall be empowered--
- (a) to enter freely and without previous notice at any hour of the day or night any workplace liable to inspection;
 - (b) to enter by day any premises which they may have reasonable cause to believe to be liable to inspection;
 - (c) to carry out any examination, test or inquiry which they may consider necessary in order to satisfy themselves that the legal provisions are being strictly observed, and in particular--
 - (i) to interview, alone or in the presence of witnesses, the employer, the staff of the undertaking or any other person in the undertaking on any matters concerning the application of the legal provisions;
 - (ii) to require, in such manner as national laws or regulations may prescribe, the production of any books, registers or other documents the keeping of which is prescribed by national laws or regulations relating to conditions of life and work, in order to see that they are in conformity with the legal provisions, and to copy such documents or make extracts from them;
 - (iii) to take or remove for purposes of analysis samples of products, materials and substances used or handled, subject to the employer or his representative being notified of any products, materials or substances taken or removed for such purposes.
2. Labour inspectors shall not enter the private home of the operator of the undertaking in pursuance of subparagraph (a) or (b) of paragraph 1 of this Article except with the consent of the operator or with a special authorisation issued by the competent authority.
3. On the occasion of an inspection visit, inspectors shall notify the employer or his representative, and the workers or their representatives, of their presence, unless they consider that such a notification may be prejudicial to the performance of their duties.

Note:

Please refer to Article 12 of the C81 report.

Model WHS Act

Section 163 of the model WHS Act outlines the powers of entry for an inspector:

- An inspector may at any time enter a place that is, or that the inspector reasonably suspects is, a workplace
- An entry may be made under 163 (1) with, or without, the consent of the person with management or control of the workplace.
- If an inspector enters a place under 163 (1) and it is not a workplace, the inspector must leave the place immediately.
- An inspector may enter any place if the entry is authorised by a search warrant.

Section 164 of the model WHS Act outlines the notification of entry under Section 163 of the model WHS Act:

- An inspector may enter a place under Section 163 without prior notice to any person

- An inspector must, as soon as practicable after entry to a workplace or suspected workplace, take all reasonable steps to notify the following persons of entry and the purpose of the entry:
 - The relevant person conducting a business or undertaking at the workplace
 - The person with management or control of the workplace
 - Any health and safety representative for workers carrying out work for that business or undertaking at the workplace
- An inspector is not required to notify any persons if to do so would defeat the purpose for which the place was entered or cause unreasonable delay.

Section 165 of the model WHS Act outlines the general powers on entry when an inspector who enters a workplace under Section 163 may do:

- Inspect, examine and make inquiries at the workplace
- Inspect and examine anything (including a document) at the workplace
- Bring to the workplace and use any equipment or materials that may be required
- Take measurements, conduct tests and make sketches or recordings (including photographs, films, audio, video, digital or other recordings)
- Take and remove for analysis a sample of any substance or thing without paying for it
- Require a person at the workplace to give the inspector reasonable help to exercise the inspector's powers under 165 (a) to (e), and
- Exercise any compliance power to other power that is reasonably necessary to be exercised by the inspector for the purposes of the Act.

Section 166 states that a person (the assistant) which may include an interpreter may accompany the inspector to assist the inspector if the inspector considers the assistance is necessary. The assistant:

- May do things at the place and in the manner that the inspector reasonably requires to assist the inspector to exercise compliance powers, but
- Must not do anything that the inspector does not have the power to do, except as permitted under a search warrant.

Anything done lawfully by the assistant is taken for all purposes to have been done by the inspector.

Section 167 of the model WHS Act states that an inspector may apply to a magistrate for a search warrant for a place. The search warrant must state:

- That a stated inspector may, with necessary and reasonable help and force, enter the place and exercise the inspector's compliance powers
- The offence for which the search warrant is sought
- The evidence that may be seized under the search warrant
- The hours of day or night when the place may be entered
- The date, within 7 days after the search warrant's issue, the search warrant ends.

Section 168 of the model WHS Act states that before executing a search warrant, the inspector named in the warrant or an assistant to the inspector must:

- Announce that he or she is authorised by the warrant to enter the place, and
- Give any person at the place an opportunity to allow that entry.

The inspector or an assistant to the inspector is not required to comply with 168(1) if he or she believes on reasonable grounds that immediate entry to the place is needed to ensure:

- The safety of any person, or
- That the effective execution of the warrant is not frustrated.

Section 170 of the model WHS Act states the limitation on places used for residential purposes. The powers of an inspector under Division 3 in relation to entering a place are not exercisable in relation to any part of a place that is used only for residential purposes except:

- With the consent of the person with management of control of the place
- Under the authority conferred by a search warrant, or
- For the purpose only of gaining access to a suspected workplace, but only:
 - If the inspector reasonably believes that no reasonable alternative access is available, and
 - At a reasonable time having regard to the times at which the inspector believes work is being carried out at the place to which access is sought.

Section 171 of the model WHS Act requires that an inspector who enters a workplace under Division 3 may:

- Require a person to tell the inspector who has custody of, or access to, a document
- Require a person who has custody of, or access to, a document to produce that document to the inspector while the inspector is at that workplace or within a specified period, or
- Require a person at the workplace to answer any questions put by the inspector.

Section 174 of the model WHS Act states the powers for an inspector to be able to copy and retain documents.

Section 175 of the model WHS Act states the power of an inspector who enters a workplace to be able to seize evidence (including a document) at the place if the inspector reasonably believes the thing is evidence of an offence against the Act.

Section 176 of the model WHS Act states that an inspector can seize the workplace or part, the plant, the substance or the structure if the workplace or part of the workplace, or the plant at the workplace, or a substance at the workplace or part of the workplace, or a structure at a workplace is defective or hazardous to a degree likely to cause serious injury or illness or a dangerous incident to occur.

Section 177 of the model WHS Act states powers for the inspector once they have seized the workplace or part, the plant, the substance or the structure.

Sections 178 – 181 of the model WHS Act provides duties around the receipt of seized things, forfeiture of seized things, the return of seized things and access to seized things.

Commonwealth Response:

The *Fair Work Act 2009* provides Fair Work Inspectors certain powers to perform their role to promote and monitor compliance with relevant Commonwealth workplace laws. These powers must only be exercised for specified compliance purposes.

Fair Work Inspectors have the right to enter without notice and without force, premises on which the Inspector reasonably believes that the FW Act or a fair work instrument applies to work that is being, or has been, performed on the premises, for specified compliance purposes.

Pursuant to s.709 of the FW Act, Fair Work Inspectors may exercise a number of powers while on premises, including to:

- interview any person;
- inspect any work, process or object;
- require a person to tell the inspector who has custody of, or access to, a record or document;
- take samples of any goods or substances in accordance with any procedures prescribed by the regulations;
- require a person who has the custody of, or access to, a record or document to produce the record or document to the inspector either while the inspector is on the premises, or within a specified period;
- inspect, and make copies of, any record or document that:
 - is kept on the premises; or
 - is accessible from a computer that is kept on the premises.

A Fair Work Inspector must not, pursuant to s.708(2), however, enter a part of the premises that is used for residential purposes unless they reasonably believe that work is being performed in that specific part of the premises. Residences where work is performed can consequently be inspected by the Fair Work Ombudsman provided the inspection takes place in parts of the premises where the work is performed for compliance purposes only.

Under s708(3), Fair Work Inspectors are required, either before or as soon as practicable after entering premises, to show his or her identity card to the occupier or to the person who apparently represents the occupier.

Under s712, a Fair Work Inspector can issue a written Notice to Produce Records or Documents, requiring a person to provide records or documents at a particular location, within a specified time period (at least fourteen days). Failure to comply with a Notice to Produce Records or Documents is a civil remedy provision can attract maximum penalties of \$6,600 for an individual and \$33,000 for a corporation.

ACT response:

The ACT has adopted the model work health and safety (WHS) provisions in the *Work Health and Safety Act 2011* (ACT). These provisions allow inspectors to ensure compliance with relevant ACT work health and safety legislation.

Under Section 163 of the WHS Act, WHS inspectors are able to enter a place without force, with or without the consent of the management and without prior notification, that is, or that the inspector reasonably believes is, a workplace.

Pursuant to Section 165 of the WHS Act, inspectors have a range of general powers while on the premises of a workplace under Section 163, including to:

- Inspect, examine and make inquiries at the workplace;
- Inspect and examine anything (including a document) at the workplace;
- Bring to the workplace and use any equipment or materials that may be required;
- Take measurements, conduct tests and make sketches or recordings (including photographs, films, audio, video, digital or other recordings);
- Take and remove for analysis a sample of any substance or thing without paying for it;
- Require a person at the workplace to give the inspector reasonable help to exercise the inspector's powers under 165 (a) to (e); and
- Exercise any compliance power or other power that is reasonably necessary to be exercised by the inspector for the purposes of the Act.

Under Section 171 of the WHS Act an inspector who enters a workplace:

- Require a person to tell the inspector who has custody of, or access to, a document;
- Require a person who has custody of, or access to, a document to produce that document to the inspector while the inspector is at that workplace or within a specified period; or
- Require a person at the workplace to answer any questions put by the inspector.

Furthermore, Section 174 of the WHS Act states the powers for an inspector to be able to copy and retain documents. Section 175 of the WHS Act also states an inspector who enters a workplace has the power to seize evidence (including a document) at the place if the inspector reasonably believes the thing is evidence of an offence against the Act. Section 176 of the WHS Act states that an inspector can seize the workplace or part, the plant, the substance or the structure if the workplace or part of the workplace, or the plant at the workplace, or a substance at the workplace or part of the workplace, or a structure at a workplace is defective or hazardous to a degree likely to cause serious injury or illness or a dangerous incident to occur.

In accordance with Section 163, an inspector must not enter a place which is not a workplace unless authorised by a search warrant.

Upon entering a workplace, Section 164 of the WHS Act requires the inspector must, as soon as practicable, take all reasonable steps to notify relevant person conducting a business or undertaking

at the workplace, the person with management or control of the workplace and any health and safety representative for workers carrying out work for that business or undertaking at the workplace of entry and the purpose of the entry. However, an inspector is not required to notify any persons if to do so would defeat the purpose for which the place was entered or cause unreasonable delay.

Article 17

The labour inspection services in agriculture shall be associated, in such cases and in such manner as may be determined by the competent authority, in the preventive control of new plant, new materials or substances and new methods of handling or processing products which appear likely to constitute a threat to health or safety.

Note:

Please indicate whether/to what extent labour inspection services are associated with the control of health and safety risks described in this article.

Model WHS Act

Section 160 of the model WHS Act outlines the functions and powers of inspectors including:

- to provide information and advice about compliance with the Act
- to assist in the resolution of:
 - work health and safety issues at workplaces
 - issues related to access to a workplace by an assistant to a health and safety representative, and
 - issues related to the exercise or purported exercise of a right of entry under Part 7 of the Act, and
- to review disputed provisional improvement notices.

Section 176 of the model WHS Act states that an inspector can seize the workplace or part, the plant, the substance or the structure if the workplace or part of the workplace, or the plant at the workplace, or a substance at the workplace or part of the workplace, or a structure at a workplace is defective or hazardous to a degree likely to cause serious injury or illness or a dangerous incident to occur.

ACT response:

The *Work Health and Safety Act 2011* (WHS Act) provides work health and safety (WHS) inspectors in the ACT certain powers to assist with labour inspection services in the agriculture industry. The ACT has adopted the model WHS provisions and under Section 160 inspectors are able to provide information and advice about compliance with this Act; assist in the resolution of work health and safety issues at workplaces, issues related to access to a workplace by an assistant to a health and safety representative and issues related to the exercise or purported exercise of a right of entry under Part 7 of the Act (Workplace entry by WHS entry permit-holders); review disputed provisional improvement notices; and to review compliance with this Act through the issuing of notices

Section 176 of the WHS Act states that a WHS inspector can seize a workplace, plant, the substance or the structure of the workplace or part of the workplace if an inspector reasonably believes that it is defective or hazardous to a degree likely to cause serious injury or illness or a dangerous incident to occur. In addition, Part 5 of the *Work Health and Safety Regulation 2011* provides for specific safety controls for new and existing plant together with a regime for the registration and inspection

of specific kinds of plant. In the Territory, safe handling of substances and materials and the prohibition of specific substances is dealt with more specifically in the *Dangerous Substances Act 2004*.

Article 18

1. Labour inspectors in agriculture shall be empowered to take steps with a view to remedying defects observed in plant, layout or working methods in agricultural undertakings, including the use of dangerous materials or substances, which they may have reasonable cause to believe constitute a threat to health or safety.

2. In order to enable inspectors to take such steps they shall be empowered, subject to any right of appeal to a legal or administrative authority which may be provided by law, to make or have made orders requiring--

(a) such alterations to the installation, plant, premises, tools, equipment or machines, to be carried out within a specified time limit, as may be necessary to secure compliance with the legal provisions relating to health or safety; or

(b) measures with immediate executory force, which can go as far as halting the work, in the event of imminent danger to health or safety.

3. Where the procedure described in paragraph 2 is not compatible with the administrative or judicial practice of the Member, inspectors shall have the right to apply to the competent authority for the issue of orders or for the initiation of measures with immediate executory force.

4. The defects noted by the inspector when visiting an undertaking and the orders he is making or having made in pursuance of paragraph 2 or for which he intends to apply in pursuance of paragraph 3 shall be immediately made known to the employer and the representatives of the workers.

Note:

Please:

- describe the steps that may be taken by OHS inspectorates to rectify defects that are listed in paragraph 1;
- describe the powers of inspectors to make orders as listed in paragraph 2 *OR* to seek such an order from a court or tribunal as indicated in paragraph 3; and
- indicate whether those orders are immediately made known to employers and worker representatives.

Model WHS Act

Section 160 of the model WHS Act outlines the functions and powers of inspectors including:

- to require compliance with the Act through the issuing of notices, for example, improvement notices (section 191), prohibition notices (section 195), and non-disturbance notices (section 198). These notices fulfil compliance with Article 18(2) of this Convention
- to investigate contraventions of the Act and assist in the prosecution of offences, and
- to attend coronial inquests in relation to work-related deaths and examine witnesses.

Section 85 of the model WHS Act allows the health and safety representative may direct a worker who is in a work group represented by the representative to cease work if the representative has a

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

Section 89 of the model WHS Act allows the health and safety representative or the person conducting a business or undertaking or the worker to ask the regulator to appoint an inspector to attend the workplace to assist in resolving an issue arising in relation to the cessation of work.

Section 176 of the model WHS Act states that an inspector can seize the workplace or part, the plant, the substance or the structure if the workplace or part of the workplace, or the plant at the workplace, or a substance at the workplace or part of the workplace, or a structure at a workplace is defective or hazardous to a degree likely to cause serious injury or illness or a dangerous incident to occur.

ACT response:

The ACT has adopted the provisions set out in the model WHS Act. Under Section 160 of the *Work Health and Safety Act 2011* (WHS Act), work health and safety inspectors have the power to require compliance with the Act through the issuing of notices, for example, improvement notices (Section 191), prohibition notices (Section 195), and non-disturbance notices (Section 198); to investigate contraventions of the Act and assist in the prosecution of offences; and to attend coronial inquests in relation to work-related deaths and examine witnesses.

Section 85 of the model WHS Act allows the health and safety representative may direct a worker who is in a work group represented by the representative to cease work if the representative has a reasonable concern that to carry out the work would expose the worker to a serious risk to the worker's health or safety, emanating from an immediate or imminent exposure to a hazard.

Section 89 of the model-WHS Act allows the health and safety representative or the person conducting a business or undertaking or the worker to ask the regulator to appoint an inspector to attend the workplace to assist in resolving an issue arising in relation to the cessation of work.

Section 176 of the model WHS Act states that an inspector can seize the workplace or part, the plant, the substance or the structure if the workplace or part of the workplace, or the plant at the workplace, or a substance at the workplace or part of the workplace, or a structure at a workplace is defective or hazardous to a degree likely to cause serious injury or illness or a dangerous incident to occur.

Article 19

1. The labour inspectorate in agriculture shall be notified of occupational accidents and cases of occupational disease occurring in the agricultural sector in such cases and in such manner as may be prescribed by national laws or regulations.

2. As far as possible, inspectors shall be associated with any inquiry on the spot into the causes of the most serious occupational accidents or occupational diseases, particularly of those which affect a number of workers or have fatal consequences.

Note:

Please refer to the law and practice report that was prepared by your jurisdiction on the Protocol of 2002 to the Occupational Safety and Health Convention, 1981 (P155). Please update this information, and provide further detail specifically relating to the agricultural industry.

Model WHS Act

Section 152 of the model WHS Act outlines the functions of the regulator including to collect, analyse and publish statistics relating to work health and safety.

Section 38 of the model WHS Act requires that a person conducting a business or undertaking reports to the regulator 'notifiable incidents' such as the serious illness, injury or death of persons and dangerous incidents arising out of the conduct of a business or undertaking.

Section 39 of the model WHS Act requires the person with management or control of a workplace at which a notifiable incident has occurred must ensure so far as is reasonably practicable, the site where the incident occurred is not disturbed until an inspector arrives at the site or any earlier time that an inspector directs.

An inspector can investigate and take appropriate enforcement action.

ACT:

Under Section 38 of the *Work Health and Safety Act 2011* (WHS Act), a person conducting a business or undertaking must report to the regulator 'notifiable incidents'. Notifiable incidents are defined under Section 35 of the Act as incidents which result in the serious illness, injury or death of persons and dangerous incidents arising out of the conduct of a business or undertaking.

Section 39 of the WHS Act requires the person with management or control of a workplace at which a notifiable incident has occurred must ensure so far as reasonably practicable, the site where the incident occurred is not disturbed until a work health and safety (WHS) inspector arrives at the site or any earlier time that an inspector directs.

A WHS inspector can investigate and take appropriate enforcement action under Section 160 of the WHS Act.

Article 20

Subject to such exceptions as may be made by national laws or regulations, labour inspectors in agriculture--

- (a) shall be prohibited from having any direct or indirect interest in the undertakings under their supervision;
- (b) shall be bound on pain of appropriate penalties or disciplinary measures not to reveal, even after leaving the service, any manufacturing or commercial secrets or working processes which may come to their knowledge in the course of their duties; and
- (c) shall treat as absolutely confidential the source of any complaint bringing to their notice a defect, a danger in working processes or a breach of legal provisions and shall give no intimation to the employer or his representative that a visit of inspection was made in consequence of the receipt of such a complaint.

Note:

Please refer to Article 15 of the C81 report.

Model WHS Act

Section 156 of the model WHS Act outlines that the regulator may, by instrument, appoint any of the following as an inspector:

- A public servant
- An employee of a public authority
- The holder of a statutory office
- A person who is appointed as an inspector under a corresponding WHS law, or
- A person in a prescribed class of persons.

Section 158 of the model WHS Act outlines the accountability of inspectors:

- An inspector must give written notice to the regulator of all interests, pecuniary or otherwise that the inspector has, or acquires, and that conflict or could conflict with the proper performance of the inspector's functions.
- The regulator must give a direction to an inspector not to deal, or to no longer deal, with a matter if the regulator becomes aware that the inspector has a potential conflict of interest in relation to a matter and the regulator considers that the inspector should not deal, or should no longer deal, with the matter.

Section 159 of the model WHS Act states that the regulator may suspend or end the appointment of an inspector and that a person's appointment as an inspector ends when the person ceases to become eligible for appointment as an inspector.

Section 161 of the model WHS Act states that an inspector's compliance powers are subject to any conditions specified in the instrument of the inspector's appointment.

Section 271 of the model WHS Act requires the confidentiality of information if a person obtains information or gains access to a document in exercising any power or function under the Act.

- The person must not (unless prescribed by section 271(3):
 - disclose to anyone else information, or the contents of or information contained in the document
 - Give access to the document to anyone else, or
 - Use the information or document for any purpose, and

A person must not intentionally disclose to another person the name of an individual who has made a complaint in relation to another person the name of an individual who has made a complaint in relation to that other person unless the disclosure is made with the consent of the complainant or the disclosure is required under a law.

Commonwealth Response:

Fair Work Inspectors are employed under the *Public Service Act 1999* (PS Act), and are required to be independent and impartial. Fair Work Inspectors adhere to the APS Code of Conduct and APS Values in all investigations.

The PS Act sets out the conditions of service for all APS employees, including engagement and termination provisions; and establishes the APS Values, which require employees to be apolitical, performing their functions in an impartial and professional manner. The APS Code of Conduct, as set out in section 13 of the PS Act, requires that an employee must:

- behave honestly and with integrity in the course of APS employment;
- disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with APS employment; and
- not make improper use of (a) inside information, or (b) the employee's duties, status, power or authority, in order to gain, or seek to gain, a benefit or advantage for the employee or for any other person.

Furthermore, it is an offence under section 70 of the *Crimes Act 1914* (Cth) for a current or former Commonwealth officer to disclose information that comes to his or her knowledge as a Commonwealth officer, without lawful authority. The maximum penalty for this offence is two years imprisonment. Further, there are corruption offences in the *Criminal Code Act 1995* (Cth).

When making a complaint to the Fair Work Ombudsman, a complainant may request that the Fair Work Ombudsman withholds their identity from their employer or former employer. The Fair Work Ombudsman makes every effort to proceed on a confidential basis, however in some circumstances this may impede the progress and resolution of an investigation.

ACT response:

The ACT has adopted the model WHS provisions.

ACT work health and safety (WHS) inspectors are public servants and are employed under the *Public Sector Management Act 1994* (PSM Act) which sets out an appropriate and robust system for declaring and dealing with real and perceived conflicts of interest, including compliance with values and the code of conduct. Section 9 of the PSM Act requires public employees to act impartially and with probity, and disclose or take reasonable action to avoid interests, pecuniary or otherwise, that could conflict with the proper performance of his or her duties. Other obligations include not taking improper advantage of his or her position to obtain benefits for themselves or any other person. An employee who breaches these obligations may be subject to disciplinary action such as a fine, demotion or termination of their employment.

Furthermore, Section 158 of the *Work Health and Safety Act 2011* (WHS Act) outlines the accountability of WHS inspectors. A WHS inspector must give written notice to the regulator of all interests, pecuniary or otherwise that the inspector has, or acquires, and that conflict or could conflict with the proper performance of the inspector's functions. The regulator must give a direction to a WHS inspector not to deal, or to no longer deal, with a matter if the regulator becomes aware that the inspector has a potential conflict of interest in relation to a matter and the regulator considers that the inspector should not deal, or should no longer deal, with the matter.

Section 271 of the WHS Act requires the confidentiality of information if a person obtains information or gains access to a document in exercising any power or function under the Act. The person must not (unless prescribed by Section 271(3):

- disclose to anyone else information, or the contents of or information contained in the document
- Give access to the document to anyone else, or
- Use the information or document for any purpose.

In addition, a person must not intentionally disclose to another person the name of an individual who has made a complaint in relation to another person the name of an individual who has made a complaint in relation to that other person unless the disclosure is made with the consent of the complainant or the disclosure is required under a law.

It is an offence under Section 153 of the *Crimes Act 1900* (ACT) for a current or former public employee of the Territory to disclose information that comes into their possession by virtue of being a public employee, without lawful authority. The maximum penalty is 50 penalty units, 2 years imprisonment or both. Any alleged breach would be referred to the Australian Federal Police for investigation and prosecution.

Article 21

Agricultural undertakings shall be inspected as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions.

Note:

Please provide practical information on the frequency and nature of inspections in agricultural workplaces, including compliance audits and educational campaigns.

Model WHS Act

Section 152 of the model WHS Act outlines the functions of the regulator.

Section 155 of the model WHS Act provides regulators with powers to obtain information, documents or evidence if it reasonably believes that a person is capable of doing so or if it will assist the regulator to monitor or enforce compliance with the Act.

Section 156 of the model WHS Act outlines that the regulator may, by instrument, appoint any of the following as an inspector:

- A public servant
- An employee of a public authority
- The holder of a statutory office
- A person who is appointed as an inspector under a corresponding WHS law, or
- A person in a prescribed class of persons.

Section 160 of the model WHS Act outlines the functions and powers of inspectors.

Commonwealth Response:

The Fair Work Ombudsman perennially provides education, assistance and advice to employers and employees. This includes employers and employees in the agricultural industry, through the provision of industry specific publications and individual advice provided to clients by the Fair Work Infoline and Fair Work Inspectors.

Furthermore, the Fair Work Ombudsman investigates complaints received from employers and employees within the agricultural industry and regularly undertakes compliance audits and educational campaigns within the industry.

During 2010-11, the Fair Work Ombudsman conducted 157 investigations in response to complaints within the agricultural, forestry and fishing industries. Monies recovered for employees as a result of this complaints activity equalled \$467,662 during this period.

Within the same period, 251 proactive audits were undertaken within these industries with \$635,700 recovered for employees as a result of this activity.

ACT response:

WorkSafe ACT, the regulator of work health and safety matters in the ACT, has a proactive inspection regime that is structured and prioritised according to a matrix of factors. This includes notifiable incidents, public reports and relevant safety and compensation data for specific industries and hazards. This regime also takes into account industries and hazards selected for specific attention at a national level. In light of the low number of employers and workers in the agricultural industry in the Territory it has not been a focus of compliance and enforcement action to date.

WorkSafe ACT undertook eight inspections in the agriculture, forestry and fishing industry in the 2009-10 financial year. This has traditionally been a relatively low risk sector in the ACT with minimal commercial operations in forestry and agriculture and no commercial fishing industry. That said, WorkSafe ACT will continue to respond to specific employers and hazards brought to its attention.

Article 22

1. Persons who violate or neglect to observe legal provisions enforceable by labour inspectors in agriculture shall be liable to prompt legal or administrative proceedings without previous warning: Provided that exceptions may be made by national laws or regulations in respect of cases in which previous notice to carry out remedial or preventive measures is to be given.

2. It shall be left to the discretion of labour inspectors to give warning and advice instead of instituting or recommending proceedings.

Note:

Please refer to Articles 17 and 18 of the C81 report. Please update where necessary.

Model WHS Act

The model WHS Act includes a range of sanctions that may be used for non-compliance. These are:

- issuing an improvement notice
- issuing a prohibition notice
- issuing a non-disturbance notice
- entering into enforceable undertakings
- entering into legal proceedings, i.e. prosecutions.

Commonwealth Response:

The Fair Work Ombudsman investigation process provides Fair Work Inspectors with discretion to investigate complaints within a compliance framework. The compliance framework includes a number of processes including:

- assisted voluntary resolution
- formal alternative dispute resolution (such as mediation)
- a full investigation process
- issuing a letter of caution
- entering into an enforceable undertaking
- issuing a compliance notice
- initiating legal proceedings through the courts.

The Fair Work Ombudsman has the ability to initiate legal proceedings under s.682(1)(d) of the FW Act .

The Fair Work Ombudsman's Guidance Note 1: *Litigation Policy*, identifies the agency's processes when considering matters for litigation. The Litigation Policy specifies that proceedings through the courts will only occur where there is sufficient evidence of a contravention and that such proceedings are deemed to be in the public interest.

In the period 1 July 2010 to 30 June 2011, the Fair Work Ombudsman commenced court proceedings regarding 56 matters, resulting in court awarded penalties totalling \$2,184,385. Court ordered payments to employees as a result of this litigation totalled \$1,888,757.54.

ACT response:

The WHS Act includes a range of sanctions that may be used for non-compliance. These are:

- issuing an improvement notice;
- issuing a prohibition notice;
- issuing a non-disturbance notice;
- entering into enforceable undertakings; and
- entering into legal proceedings, i.e. prosecutions.

Inspectors may enter into legal proceedings under Part 13 of the *Work Health and Safety Act 2011*. It is the discretion of inspectors whether to give warning and advice or to institute proceedings.

The ACT Work Health and Safety *Compliance and Enforcement Policy* provides further information about these enforcement options as well as the investigation and prosecution policies. The ACT Office of the Director of Public Prosecutions *Prosecution Policy* identifies the processes and factors taken into account in deciding whether to prosecute an employer or worker.

Article 23

If labour inspectors in agriculture are not themselves authorised to institute proceedings, they shall be empowered to refer reports of infringements of the legal provisions directly to an authority competent to institute such proceedings.

Note:

Please refer to Article 17 of the C81 report.

Model WHS Act

Section 230 of the model WHS Act states that subject to 230(4), proceedings for an offence against the Act may only be brought by:

- the regulator, or
- an inspector with the written authorisation of the regulator (either generally or in a particular case).

Section 230(4) of the model WHS Act states that nothing in this section affects the ability of the Director of Public Prosecutions to bring proceedings for an offence against this Act.

Commonwealth Response:

The Fair Work Ombudsman has the ability to initiate legal proceedings pursuant with Fair Work Ombudsman Guidance Note 1: *Litigation Policy*.

Matters outside the jurisdiction of the Fair Work Ombudsman may be referred to the appropriate authority.

ACT response:

Under Section 230 of the WHS Act, subject to 230(5), proceedings for an offence against the Act in the Territory may be brought by the regulator or an inspector with the written authorisation of the regulator (either generally or in a particular case).

Article 24

Adequate penalties for violations of the legal provisions enforceable by labour inspectors in agriculture and for obstructing labour inspectors in the performance of their duties shall be provided for by national laws or regulations and effectively enforced.

Note:

Please refer to Article 18 of the C81 report.

Model WHS Act

Under sections 31-33 of the model WHS Act, there are three levels of offences and penalties. These are:

- Reckless conduct – category 1
 - The person with a health and safety duty is reckless as to the risk to an individual of death or serious injury.
 - The maximum penalty for an individual (not a PCBU) is \$300,000 or 5 years imprisonment or both
 - The maximum penalty for an individual who is a PCBU is \$600,000 or 5 years imprisonment or both
 - The penalty for a body corporate is \$3,000,000.
- Failure to comply with health and safety duty – category 2
 - The person has a health and safety duty and the failure exposes an individual to a risk of death or serious injury or illness.
 - The maximum penalty for an individual (not a PCBU) is \$150,000
 - The maximum penalty for an individual who is a PCBU is \$300,000
 - The penalty for a body corporate is \$1,500,000.
- Failure to comply with health and safety duty – category 3
 - The person with a health and safety duty fails to comply with that duty.
 - The maximum penalty for an individual (not a PCBU) is \$50,000
 - The maximum penalty for an individual who is a PCBU is \$100,000
 - The penalty for a body corporate is \$500,000.

Section 188 of the model WHS Act states that a person must not intentionally hinder or obstruct an inspector in exercising his or her compliance powers, or induce or attempt to induce any other person to do so. The maximum penalty in the case of an individual is \$10,000. The maximum penalty in the case of a body corporate is \$50,000.

Commonwealth Response:

Contraventions of the FW Act may attract civil remedy provision penalties. Section 539 of the FW Act outlines those contraventions which may attract a penalty. Generally, penalties of up to \$6,600 for an individual and \$33,000 for a corporation can apply.

Furthermore, Fair Work Inspectors are provided with certain coercive powers under the FW Act, including the power to:

- require a person to disclose their name and address if the Inspector reasonably believes that the person has contravened a civil remedy provision of the FW Act
- require a person, by written notice, to produce a document to the Inspector
- issue a compliance notice if the Inspector reasonably believes that a person has contravened the FW Act or a FW Instrument. The notice can require the person to take specified action to remedy the contravention, and/or to produce evidence of the person's compliance with the notice within a reasonable specified time frame.

If a person fails to comply with the above directions, then the Inspector can apply to the Federal Court, the Federal Magistrates Court, or an eligible State or Territory Court for orders in relation to the contravention.

ACT response:

The ACT has adopted the penalty system of the model WHS Act.

Under Sections 31-33 of the *Work Health and Safety Act 2011* (WHS Act), there are three levels of offences and penalties for the principal safety duties. These are:

- Reckless conduct – category 1
 - The person with a health and safety duty is reckless as to the risk to an individual of death or serious injury.
 - The maximum penalty for an individual (not a PCBU) is \$300,000 or 5 years imprisonment or both
 - The maximum penalty for an individual who is a PCBU is \$600,000 or 5 years imprisonment or both
 - The penalty for a body corporate is \$3,000,000.
- Failure to comply with health and safety duty – category 2
 - The person has a health and safety duty and the failure exposes an individual to a risk of death or serious injury or illness.
 - The maximum penalty for an individual (not a PCBU) is \$150,000
 - The maximum penalty for an individual who is a PCBU is \$300,000
 - The penalty for a body corporate is \$1,500,000.
- Failure to comply with health and safety duty – category 3
 - The person with a health and safety duty fails to comply with that duty.
 - The maximum penalty for an individual (not a PCBU) is \$50,000
 - The maximum penalty for an individual who is a PCBU is \$100,000
 - The penalty for a body corporate is \$500,000.

There are also criminal and civil penalties for breaching specific offence provisions within the WHS Act and associated Work Health and Safety Regulation 2011.

Work health and safety inspectors can secure compliance with the WHS Act by issuing improvement notices or prohibition notices. If a person fails or refuses to comply with an improvement notice, the penalty is \$50,000 for an individual and \$250,000 for a body corporate. If a person fails or refuses to comply with a prohibition notice, the penalty is \$100,000 for an individual or \$500,000 for a body corporate.

Section 188 of the WHS Act states that a person must not intentionally hinder or obstruct an inspector in exercising his or her compliance powers, or induce or attempt to induce any other person to do so. The maximum penalty in the case of an individual is \$10,000. The maximum penalty in the case of a body corporate is \$50,000.

Article 25

1. Labour inspectors or local inspection offices, as the case may be, shall be required to submit to the central inspection authority periodical reports on the results of their activities in agriculture.

2. These reports shall be drawn up in such manner and deal with such subjects as may from time to time be prescribed by the central inspection authority; they shall be submitted at least as frequently as may be prescribed by that authority and in any case not less frequently than once a year.

Note:

Please refer to Article 19 of the C81 report.

Model WHS Act

Section 152 of the model WHS Act outlines the functions of the regulator including to collect, analyse and publish statistics relating to work health and safety.

Commonwealth Response:

Fair Work Inspectors enter the details of every complaint received into the Fair Work Ombudsman's claims management system (the Client Liaison and Information Management System II database, or CLAIMSII), including details of the investigation carried out, all notes of phone conversations, visits to business premises and actions taken. CLAIMSII has the capacity to produce a case summary report, which is printed once the matter is finalised and provided to team leaders/managers. The summary report provides details of the employer and employee, titles of the relevant industrial instrument(s), any breaches against the relevant industrial instrument(s), monies and litigation penalties recovered (if any), and any additional notes.

This information provides the basis for subsequent reports provided to the relevant executive members for consideration, supplied on a weekly and a monthly basis.

This information also forms the basis of agency-wide annual reporting to Parliament and others.

ACT:

Section 152 of the model WHS Act outlines the functions of the regulator including to collect, analyse and publish statistics relating to work health and safety. A range of data on the activities and output of the WHS Regulator and its inspectors are reported on in ACT Public Service Annual Reports. Available data is also provided to Safe Work Australia as the Commonwealth statutory agency responsible for assisting all jurisdictions to improve work health and safety and workers' compensation arrangements across Australia.

Article 26

1. The central inspection authority shall publish an annual report on the work of the inspection services in agriculture, either as a separate report or as part of its general annual report.
2. Such annual reports shall be published within a reasonable time after the end of the year to which they relate and in any case within twelve months.
3. Copies of the annual reports shall be transmitted to the Director-General of the International Labour Office within three months after their publication.

Note:

Please refer to Article 20 of the C81 report.

Model WHS Act

Section 152 of the model WHS Act outlines the functions of the regulator including to advise and make recommendation to the Minister and report on the operations and effectiveness of the Act

Commonwealth Response:

Section 686 of the FW Act requires the Fair Work Ombudsman to provide the Minister for Education, Employment and Workplace Relations with an annual report on the operations of his or her Office.

Reports must be provided as soon as practicable after the end of each financial year and they must be tabled in Parliament. The Fair Work Ombudsman is required to table its 2010-11 annual report to Parliament by the end of October 2011.

ACT response:

The ACT Government Justice and Community Safety Directorate Annual Report covers the activities and outcomes of work health and safety regulatory activities in the Territory in each financial year. These Reports contain information on the work of the inspection services in agriculture, such as the number of site visits, the number of improvement notices, the number of prohibition notices and the number of infringement notices. The Annual Reports are published each year and are publicly available.

Article 27

The annual report published by the central inspection authority shall deal in particular with the following subjects, in so far as they are under the control of the said authority:

- (a) laws and regulations relevant to the work of labour inspection in agriculture;
- (b) staff of the labour inspection service in agriculture;
- (c) statistics of agricultural undertakings liable to inspection and the number of persons working therein;
- (d) statistics of inspection visits;
- (e) statistics of violations and penalties imposed;
- (f) statistics of occupational accidents, including their causes;
- (g) statistics of occupational diseases, including their causes.

Note:

Please refer to Article 21 of the C81 report.

Commonwealth Response:

The Fair Work Ombudsman's 2010-11 annual report will contain information relating to:

- (a) laws and regulations relevant to the work of the inspection service;
- (b) staff of the labour inspection service;
- (c) information regarding the types of workplaces liable to inspection within Australia;
Indicative figures regarding the number of workers employed therein may be provided;
- (d) statistics of inspection visits; and
- (e) statistics of violations and penalties imposed.

In addition, the annual report will include other statistics and information relating to the other functions of the Fair Work Ombudsman, as appropriate.

ACT response:

The 2010-2011 ACT Government Justice and Community Safety Annual Report refers to the laws and regulations enforced by WorkSafe ACT (the regulator of work health and safety (WHS) matters in the Territory) and contains information relating to inspectors and support staff for WHS compliance and enforcement activities. It also outlines information about the number and nature of WHS inspection visits undertaken and the outcome of these activities.