



**ACT**  
Government

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Chief Minister and Treasury

**International Labour Organisation**  
**Home Work Convention, 1996 (No. 177)**

**Law and Practice Report of the ACT**

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Publication Date: June, 2013

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**International Labour Organisation**

# **Home Work Convention, 1996 (No. 177)**

**Law and Practice Report of Australian Capital Territory  
April 2013**

## **Overview**

The Australian Capital Territory (ACT) regards itself as compliant with this Convention.

Provisions under the Commonwealth *Fair Work Act 2009* (FW Act) apply wholly to the ACT in respect to the majority of the ACT's industrial relations matters including, minimum terms and conditions of employment, flexible working arrangements and industrial representation. The FW Act also regulates other laws establishing awards and collective agreements dealing with outworkers.

Additional protections provided under ACT law provide effectively to protect and safeguard the entitlements, conditions and treatment of persons undertaking home work as a relevant type of worker. These provide, so far as possible, for equality of treatment between outworkers and other wage earners, taken together with relevant Commonwealth laws that apply wholly to the Territory. This effectively complies with the Convention in respect of matters such as freedom of association, employment-based discrimination, occupational health and safety, remuneration, social security, access to training, minimum age and maternity protections. Relevant ACT laws include:

- *Work Health and Safety Act 2011;*
- *Workers Compensation Act 1951;*
- *Crimes Act 1900;*
- *Discrimination Act 1991;*
- *Human Rights Act 2004;*
- *Children and Young People Act 2008; and*
- *Dangerous Substances Act 2004.*

These laws are regulated by specific ACT regulatory agencies in accordance with established compliance and enforcement penalties. Each law provides appropriate penalties for non-compliance.

**Article 1**

For the purposes of this Convention:

- (a) the term **home work** means work carried out by a person, to be referred to as a homemaker, (i) in his or her home or in other premises of his or her choice, other than the workplace of the employer;
- (ii) for remuneration;
- (iii) which results in a product or service as specified by the employer, irrespective of who provides the equipment, materials or other inputs used, unless this person has the degree of autonomy and of economic independence necessary to be considered an independent worker under national laws, regulations or court decisions;
- (b) persons with employee status do not become homeworkers within the meaning of this Convention simply by occasionally performing their work as employees at home, rather than at their usual workplaces;
- (c) the term **employer** means a person, natural or legal, who, either directly or through an intermediary, whether or not intermediaries are provided for in national legislation, gives out home work in pursuance of his or her business activity.

**ACT Response**

The ACT complies with Article 1 of Convention 177 (the Convention).

Provisions under the Commonwealth's *Fair Work Act 2009* (Cth) (FW Act) apply wholly to the Australian Capital Territory (ACT) in respect to the majority of the ACT's industrial relations matters, as described in the Overview to this Report. For this purpose, relevant types of workers that fall within the scope of the Convention include:

- outworkers (section 12 of the FW Act);
- TCF Outworkers (section 12 of the FW Act); and
- independent contract outworkers in the TCF industry (known as TCF contract outworkers by application of the *Fair Work Amendment (Textile, Clothing and Footwear Industry) Act 2012* (Cth).

Throughout this report, the term 'outworker' includes all workers deemed to fall within the scope of the Convention.

**Definition of *Homemaker and Home Work***

Relevant ACT laws for the purposes of compliance with this Convention apply for the protection of home-based workers (referred to as 'outworkers'), as set out in this Article.

In the ACT, people performing work from home are generally known as 'outworkers' rather than 'homeworkers'. The definitions of 'outworker' in the *Workers Compensation Act 1951* (ACT), *Crimes Act 1900* (ACT) and the FW Act are broadly consistent with the definition of 'homemaker' described by the Convention. Further, the *Work Health and Safety Act 2011* (WHS Act) (ACT) applies to all workers and so provides for the protection of all persons described in Article 1.

Under s 15 of the *Workers Compensation Act 1951*, and s 49A of the *Crimes Act 1900*, an outworker is defined as an individual engaged by a person (the principal) under a contract for services to treat or manufacture articles or materials, or to perform other services –

- (a) in the outworker's own home; or

(b) on other premises not under the control or management of the principal.

Section 7 of the WHS Act provides that a person is a worker if the person carries out work in any capacity for a person conducting a business or undertaking including work as an employee, contractor or sub contractor, employee of a contractor or subcontractor, employee of a labour hire company who has been assigned to work in the person's business or undertaking, outworker, apprentice or trainee or a person of a prescribed class.

Under s 8, a workplace is a place where work is carried out for a business or undertaking and includes any place where a worker goes, or is likely to be, while at work. This may include, a vehicle, vessel, aircraft or other mobile structure and any waters and any installation on land, on the bed of any waters or floating on any waters.

### Definition of *employer*

For work health and safety matters in the ACT, people who give out work in pursuance of his or her business activity are generally known as 'Persons Conducting a Business or Undertaking' or 'PCBUs'. The definition of 'PCBU' in the WHS Act is broadly consistent with the definition of 'employer' in the Convention and covers both legal and natural persons. Throughout this report, the term 'PCBU' includes all employers deemed to fall within the scope of the Convention.

**Article 2**

This Convention applies to all persons carrying out home work within the meaning of Article 1.

Nil response required. See response under Article 1 for application of the Convention in Australia.

**Article 3**

Each Member which has ratified this Convention shall adopt, implement and periodically review a national policy on home work aimed at improving the situation of homeworkers, in consultation with the most representative organizations of employers and workers and, where they exist, with organizations concerned with homeworkers and those of employers of homeworkers.

**ACT Response**

The ACT considers itself compliant with Article 3 of the Convention through the application of provisions of the FW Act and those subordinate laws and instruments that supports its operation.

**Article 4**

1. The national policy on home work shall promote, as far as possible, equality of treatment between homeworkers and other wage earners, taking into account the special characteristics of home work and, where appropriate, conditions applicable to the same or a similar type of work carried out in an enterprise.

2. Equality of treatment shall be promoted, in particular, in relation to:

- (a) the homeworkers' right to establish or join organizations of their own choosing and to participate in the activities of such organizations;
- (b) protection against discrimination in employment and occupation;
- (c) protection in the field of occupational safety and health;
- (d) remuneration;
- (e) statutory social security protection;
- (f) access to training;
- (g) minimum age for admission to employment or work; and
- (h) maternity protection.

**ACT Response**

The ACT considers that it complies with Article 4 of the Convention.

Effect is given to this Article by the general protections and unlawful termination provisions of the FW Act, the WHS Act primary duty of care provisions and other relevant laws described in this report. As outlined below, laws in the ACT do not distinguish between outworkers and other workers generally in relation to entitlements.

**Article 4(2)(a) – Freedom of association**

Freedom of Association protections in the Commonwealth FW Act apply wholly to the ACT.

In addition, s 7(k) of the *Discrimination Act 1991* (ACT) (Discrimination Act) lists industrial activity as one of the protected attributes against which it is unlawful to discriminate against a person.

Further, s 15 of the *Human Rights Act 2004* (ACT) provides that everyone has the right of peaceful assembly and to freedom of association.

**Article 4(2)(b) – Protection against discrimination**

The protections against discrimination in employment and occupation outlined in the FW Act apply wholly to the ACT. In addition, s 7 of the Discrimination Act provides that it is unlawful to discriminate against a person on the ground of any protected attributes, including:

- sex;
- status as a parent or carer;
- industrial activity;
- profession, trade, occupation or calling; and
- association (whether as a relative or otherwise) with a person identified by reference to an attribute referred to above.

Section 10 of the Discrimination Act protects all workers against discrimination in employment and occupation (including recruitment and engagement or employment as a contract worker) in respect



of the terms and conditions on which employment is offered and the rights of the worker to promotion, transfer, training or any other benefit associated with employment.

Further, the ACT has adopted the model work health and safety legislation provisions relating to discrimination against workers and contractors for exercising safety functions or raising safety issues and the like (Division 6.1 of the WHS Act).

#### Article 4(2)(c) – Occupational health and safety

As stated in Article 1, under WHS legislation a person is a “worker” if the person carries out work in any capacity for a PCBU, including work as an outworker (WHS Act, s (7)(1)(e)).

The principal duty of care outlined in s 19 of the WHS Act requires a person conducting a business or undertaking to ensure, so far as is reasonably practicable, the health and safety of workers engaged or caused to be engaged by them. As part of this duty, the PCBU must ensure, so far as is reasonably practicable, the following:

- the provision and maintenance of a work environment without risks to health and safety;
- the safe use, handling, storage and transport of plant, structures and substances;
- the provision of adequate facilities for the welfare at work of workers, including access to those facilities; and
- the provision of any information, training, instruction or supervision that is necessary to protect all persons from risks to their health and safety arising from work carried out as part of the conduct of the business or undertaking.

These provisions protect all people who carry out work in any capacity for a business or undertaking, regardless of where the work is carried out.

In addition, s 49A of the *Crimes Act 1900* includes outworker in the definition of ‘worker’ for the purposes of its provisions dealing with industrial manslaughter.

#### Article 4(2)(d) – Remuneration

The Commonwealth, through the FW Act, regulates industrial entitlements of all workers in the ACT.

#### Article 4(2)(e) – Statutory social security protection

Section 15 of the *Workers Compensation Act 1951* (ACT) includes outworker in the definition of ‘worker’ for the purposes of an employee’s access to workers’ compensation. To remove any doubt, the outworker is taken to be a worker employed by the principal if the outworker is taken to be a worker employed by the principal under s 11 (regular contractors and casuals) or s 12 (labour hire arrangements).

The ACT is a part of Australia’s social security system, for which the Commonwealth Government provides.

#### Article 4(2)(f) – Access to training

Section 10 (2)(b) of the *Discrimination Act* provides that it is unlawful for an employer to discriminate against an employee by denying the employee access, or limiting the employee’s access, to opportunities for promotion, transfer or training or to any other benefit associated with employment.

Article 4(2)(g) – Minimum age for admission to employment

ACT legislation provides for compulsory education, ensuring that the vast majority of children attend school on a full-time basis. Under s 10 of the *Education Act 2004* (ACT), children in the ACT must attend school if the child is at least 6 years old and are required to remain in full-time education (at least 25 hours per week) until achieving Year 10, unless they receive an exemption certificate from the government. After completing year 10, young people are required to participate in full-time education, training or employment until completing Year 12 or equivalent or reaching age 17, whichever occurs first.

Until a child or young person completes Year 10, they may engage in part-time or casual employment. ACT legislation seeks to protect children and young people from any exploitation and risk they may face in the workplace and seeks to provide standards and regulations that work towards this goal. Restrictions on the employment of children and young people are principally set out in:

- the *Children and Young People Act 2008* (ACT) (CYP Act);
- Children and Young People Regulation 2009;
- Children and Young People (Employment) Standards 2009 (No. 1); and
- Children and Young People (High Risk Employment) Declaration 2009 (No. 1).

These laws restrict the types of employment and the number of hours per week a child or young person may be engaged in to ensure that employment is not contrary to the best interests of a child or young person. In addition, the employment of a child or young person must not adversely affect the child or young person's ability to benefit from their education or training and an employer must not employ a child or young person of compulsory education age during school hours.

The *Children and Young People (Employment) Standards 2011 (No 1)* has been introduced under s 792 of the CYP Act to protect children and young people in employment. These laws restrict the types of employment and the number of hours per week a child or young person may be engaged to ensure that employment is not contrary to the best interests of a child or young person. Employers of children and young people must comply with these Standards.

Standard 1 of the *Children and Young People (Employment) Standards 2011 (No 1)* applies to the employment of all children and young people under 18 years of age and standards 2-10 apply to the employment of all children and young people under 15 years of age. A summary of these Standards is as follows:

- Standard 1 - The employment of a child or young person under 18 years of age must not be contrary to the best interests of the child or young person (i.e. not adversely affect their schooling or harm their health, safety, personal or social development).
- Standard 2 – Employers must operate in accordance with all other Australian Capital Territory and Commonwealth legislation and regulations.
- Standard 3 - Consideration must be given to the child or young person's physical ability and the impact of the work on their physical, emotional and social development. The level of responsibility of the role must be consistent with the child or young person's capacity to perform the duties, regardless of age.
- Standard 4 - Employers must seek consent from the child or young person and their parent/guardian prior to employing the child or young person.

- Standard 5 - Employers have a duty of care to ensure each child or young person is provided with appropriate supervision, a safe and healthy work environment, access to their parent/guardian, and appropriate induction and performance management techniques.
- Standard 6 – Children and young people may undertake light work for up to 10 hours per week, in all workplaces. Children or young people may only be employed for one shift per day, minimum 12 hours between shifts, not between 10pm and 6am and given access to adequate rest breaks. The maximum length of a shift varies between 3 and 6 hours and is dependent on the age of the child or young person.
- Standard 7 – Employers must take reasonable measures to ensure children and young people have arrangements in place for safe travel to and from work.
- Standard 8 – A child or young person must not be employed if the employment is considered to be high risk.
- Standard 9 – These employment standards still apply to children and young people in a family business.
- Standard 10 – Employers must keep up to date records, including additional records pertaining to employees to those required under current legislation.

Under s 803 of the CYP Act, a person commits an offence if they employ a child or young person under the age of 15 in high risk employment. Under s 798 of the Act, the relevant Minister may declare employment in an industry, occupation or activity to be high risk if it is likely to harm a child or young person's health, safety, personal or social development (including by sexual or financial exploitation).

Further, in order to operate certain high risk plant (machinery) in the ACT, a worker must have a high risk work licence. Under s 89 of the Work Health and Safety Regulation 2011 (ACT) (WHS Regulation), the Regulator must be satisfied that the person applying for a high risk work licence is at least 18 years of age.

Article 4(2)(h) – Maternity Protection

The FW Act provides for maternity protection for workers in the ACT.

**Article 5**

The national policy on home work shall be implemented by means of laws and regulations, collective agreements, arbitration awards or in any other appropriate manner consistent with national practice.

**ACT Response**

The Commonwealth, through the FW Act, regulates modern awards and collective agreements, which are binding on the Territory.

**Article 6**

Appropriate measures shall be taken so that labour statistics include, to the extent possible, home work.

**ACT Response**

The ACT considers that it is compliant with this Article.

Statistics of the kind stated in Article 6 are collected under Commonwealth legislation. In evaluating labour statistics relating to outworkers, including the demographic makeup and locations of work, the ACT relies principally on data obtained through the Australian Bureau of Statistics and other national source material collected under relevant Commonwealth legislation.

**Article 7**

National laws and regulations on safety and health at work shall apply to home work, taking account of its special characteristics, and shall establish conditions under which certain types of work and the use of certain substances may be prohibited in home work for reasons of safety and health.

**ACT Response**

The ACT considers that it is compliant with Article 7 of the Convention.

The WHS Act and WHS Regulation cover a broad range of businesses and undertakings and protect workers outside the traditional employment relationship, including apprentices, self-employed persons and outworkers.

The principal duty of care outlined at s 19 of the WHS Act requires a person conducting a business or undertaking to ensure, so far as is reasonably practicable, the health and safety of workers engaged or caused to be engaged by them. As part of this duty, the PCBU must ensure, so far as is reasonably practicable, the following:

- the provision and maintenance of a work environment without risks to health and safety;
- the safe use, handling, storage and transport of plant, structures and substances;
- the provision of adequate facilities for the welfare at work workers, including access to those facilities; and
- the provision of any information, training, instruction or supervision that is necessary to protect all persons from risks to their health and safety arising from work carried out as part of the conduct of the business or undertaking.

These provisions protect all people who carry out work in any capacity for a business or undertaking, regardless of where the work is carried out.

Part 3.1 of the WHS Regulation outlines the responsibilities a duty holder has in terms of managing risks to health and safety. This includes the requirement to identify reasonable foreseeable hazards that could give rise to risks to health and safety (s 34), eliminate risks to health and safety so far as is reasonably practicable and if it is not reasonably practicable to eliminate risks to health and safety, minimise those risks so far as is reasonably practicable, using the hierarchy, maintenance and review of control measures outlined in ss 36-38 of the WHS Regulation (s 35).

Under s 39 of the WHS Regulation, a PCBU must ensure that information, training and instruction provided to a worker is suitable and adequate having regard to:

- the nature of the work; and
- the risks associated with the work at the time the information, training or instruction is provided; and
- the control measures implemented.

The PCBU must also ensure, so far as is reasonably practicable, that this information, training and instruction is provided in a way that is readily understandable by any person to whom it is provided.

Outlined below are specific provisions in the WHS Act that have particular relevance to home-based work, although they apply to all workers.

Division 3.2.2 of the WHS Regulation outlines the duties a PCBU has in relation to the general working environment. The PCBU has a duty to ensure, so far as is reasonably practicable, the layout, maintenance and lighting of the workplace allows for persons to enter, exit and move about without risk to health and safety, both under normal working conditions and in an emergency.

A PCBU must also ensure, so far as is reasonably practicable, work areas have adequate space, lighting and ventilation and that floors and other surfaces are designed, installed and maintained to allow work to be carried out without risk to health and safety. Other duties included in this section require a PCBU to ensure, so far as is reasonable practicable, workers carrying out work in extremes of heat or cold are able to carry out work without risk to health and safety and that work in relation to or near essential services does not give rise to a risk to health and safety of persons at the work place (s 40).

Further, a PCBU must ensure, so far as is reasonably practicable, the provision of adequate facilities for workers, including toilets, drinking water, washing facilities and eating facilities and that these facilities are maintained so as to be in good working order and clean, safe and accessible (s 41);

Where personal protective equipment (PPE) is to be used to minimise a risk to health and safety in accordance with the hierarchy of control measures (outlined in s 36 of the WHS Regulation), the PCBU who directs the carrying out of work must provide PPE to workers at the workplace, unless the personal protective equipment has been provided by another PCBU (s 44). The PCBU who directs the carrying out of work must ensure that the PPE is selected to minimise risk to health and safety (s 44(3)(a)) and is maintained, repaired or replaced so that it continues to minimise risk to the worker who uses it (s 44(3)(b)). The PCBU must also provide the worker with information, training and instruction in the proper use, wearing, storage and maintenance of the PPE (s 44(4)).

Where a PCBU provides a worker with PPE, the worker must, so far as they are reasonable able, use or wear the equipment in accordance with any information, or reasonable instruction by the PCBU. The worker must not intentionally misuse or damage the equipment and must inform the PCBU of any damage to, defect in or need to clean or decontaminate any of the equipment of which the worker becomes aware (s 46).

Section 48 of the WHS Regulation provides that where a worker carries out work that is isolated from the assistance of other people because of the location, time or nature of the work being done, the PCBU must manage risks to the health and safety of a worker associated with remote or isolated work, in accordance with pt 3.1 of the Regulation.

Under s 57 of the WHS Regulation, a PCBU must manage, in accordance with pt 3.1 of the Regulation, risks to the health and safety relating to hearing loss associated with noise and must also ensure that the noise that a worker is exposed to at the workplace does not exceed the exposure standard for noise.

Chapter 5 of the WHS Regulation outlines general duties of PCBUs that design plant (e.g. sewing machines and other equipment and tools). For example, under s 189 of the Regulation, where a designer of a plant uses guarding as a control measure (as outlined in s 36 of the Regulation), the designer must ensure, so far as is reasonably practicable, that the guarding designed for that purpose will prevent access to the danger point or danger area of the plant. The designer must also

ensure that the guarding is designed to make bypassing or disabling of the guarding, whether deliberately or by accident, as difficult as is reasonably practicable.

Section 194 of the WHS Regulation further provides that a manufacturer of plant must ensure that guarding used as a control measure is of solid construction and securely mounted so as to resist impact or shock. The manufacturer must also ensure that if guarding is removed (for maintenance and cleaning) that, so far as is reasonably practicable, the plant cannot be restarted unless the guarding is replaced.

In addition, under s 208 of the WHS Regulation, where guarding is used as a control measure in relation to plant at a workplace, the PCBU must ensure that the type of guarding employed is determined in accordance with the hierarchy of control measures outlined in the Regulation (e.g. the guard employed is a permanently fixed barrier or, where this is not reasonably practicable, an interlocked physical barrier etc.).

Further, the person with management or control of the plant must ensure that the guarding is of solid construction and securely mounted, makes bypassing or disabling of the guarding as difficult as is reasonably practicable, does not create a risk in itself and is properly maintained (s 208(3)).

As mentioned above, under s 19 of the WHS Act, a PCBU has a duty, to ensure, so far as is reasonably practicable, the health and safety of workers engaged or caused to be engaged by them. As part of this duty, the PCBU must ensure, so far as is reasonably practicable, the safe use, handling, storage and transport of plant, structures and substances (s 19(3)(d)).

In addition, under s 53 of the WHS Regulation, a person conducting a business or undertaking at a workplace must ensure that, if flammable or combustible substances are kept at the workplace, the substances are kept at the lowest practicable quantity for the workplace. Flammable or combustible substances include, whether empty or full, gas cylinders and flammable and combustible liquids, including waste liquids in containers.

The *Dangerous Substances ACT 2004* (ACT) imposes duties to ensure the safe use and storage of dangerous substances. Section 29 (2) of the Act extends the obligations imposed upon employers regarding safe storage and handling of dangerous substances to residential premises, if that premises is used for a commercial purpose requiring the handling of such a substance.



**Article 8**

Where the use of intermediaries in home work is permitted, the respective responsibilities of employers and intermediaries shall be determined by laws and regulations or by court decisions, in accordance with national practice.

**ACT Response**

The use of intermediaries is not a feature of the National Workplace Relations System, under which the workplace relations system in the ACT is regulated. Where an outworker receives work from a person or company and is economically dependent on them, that person or company automatically becomes their employer. Please refer to Article 1 for more information.

**Article 9**

1. A system of inspection consistent with national law and practice shall ensure compliance with the laws and regulations applicable to home work.
2. Adequate remedies, including penalties where appropriate, in case of violation of these laws and regulations shall be provided for and effectively applied.

**ACT Response**

The ACT regards itself as compliant with this Article.

The system of labour inspection for industrial matters in the ACT is provided by the FW Act and the *Fair Work Regulations 2009*. As such, the Commonwealth Office of the Fair Work Ombudsman is responsible for providing education, assistance and advice about the workplace relations system in the ACT.

The ACT's work health and safety (WHS) inspection system supplements the Commonwealth system of labour inspection. It comprises, for WHS, the WHS Act and WHS Regulation. These laws cover a broad range of businesses and undertakings and protect workers outside the traditional employment relationship, including apprentices, self-employed persons and outworkers.

The WHS Act sets out a comprehensive enforcement regime, including the provision of appropriate penalties and corrective measures to ensure the effective enforcement of the provision of the Convention.

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 (DPP) *Prosecution Policy* identifies the processes and factors taken into account in deciding whether to prosecute an employer or worker.

WorkSafe ACT is the relevant regulator responsible for compliance and enforcement of WHS laws in the Territory and has the function to conduct and defend proceedings under the Act before a court or tribunal. WorkSafe ACT is also responsible for promoting and supporting education and training on matters relating to WHS.

WorkSafe ACT inspectors are appointed under s 156 of the WHS Act and, under s 160 of the Act, have the power to:

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

Under s 163 of the WHS Act, WorkSafe ACT inspectors may at any time enter a place that is, or that the inspector reasonably suspects is, a workplace (including residential premises). Pursuant to s 165 of the WHS Act, an inspector who enters a workplace under s 163 may do one or more of the following:

- (a) inspect, examine and make enquiries at the workplace;
- (b) inspect and examine anything (including a document) at the workplace;

- (c) bring to the workplace and use any equipment or materials that may be required;
- (d) take measures, conduct tests and make sketches or recordings (including photographs, films, audio, video, digital or other recordings);
- (e) take and remove for analysis a sample of any substance or thing without paying for it;
- (f) require a person at the workplace to give the inspector reasonable help to exercise the inspector's powers under paragraphs (a) to (e);
- (g) exercise any compliance power or other power that is reasonably necessary to be exercised by the inspector for the purposes of the Act.

Also, under s 165 of the WHS Act, a person required to give reasonable help under subsection (1)(f) must not, without reasonable excuse, refuse or fail to comply with the requirement and, under s 188, 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 for this type of offence is \$10,000 in the case of an individual or \$50,000 for a body corporate.

In addition, a WorkSafe ACT inspector who enters a workplace under s 163 of the WHS Act may seize the workplace or part, the plant, the substance or the structure if the inspector reasonable believes that 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 (s 176). A WorkSafe ACT inspector may also seize anything (including a document) at a workplace if they reasonably believe the thing is evidence of an offence against the WHS Act (s 175)

Further, s155 of the WHS Act provides the Regulator with the power 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.

Part 3 of the WHS Act outlines incident notification requirements under the Act. Under s 38 of the Act, a PCBU must ensure that the regulator is notified (either by telephone or in writing) immediately after becoming aware that a notifiable incident (the serious injury, illness or death of a person or a dangerous incident) arising out of the conduct of the business or undertaking has occurred. The maximum penalty for this type of an offence is \$10, 000 for an individual or \$50, 000 for a body corporate.

The PCBU must keep a record of each notifiable incident for at least five years from the day that notice of the incident is given to the regulator (s 38). The maximum penalty for this type of an offence is \$5, 000 for an individual or \$25, 000 for a body corporate.

In addition, s 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 is reasonably practicable, the site where the incident occurred is not disturbed until a WorkSafe ACT inspector arrives at the site or any earlier time that an inspector directs. This does not prevent any action that is essential to make the site safe, is associated with a police investigation, or action to assist an injured or remove a deceased person. The maximum penalty for an offence against s 39 of the WHS Act is \$10,000 in the case of an individual or \$50,000 for a body corporate.

Under s 230 of the WHS Act (subject to s 230(5)), proceedings for an offence against the Act may be brought by the Regulator or by an inspector with the written authorisation of the regulator (either generally or in a particular case). If the regulator believes on reasonable grounds that a person has committed an offence against the Act, the regulator may refer the matter to the DPP.

Under ss 31-33 of the 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 or illness.

- 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 WHS Regulation.

WHS inspectors can also secure compliance with WHS Legislation by issuing improvement notices (s 191) or prohibition notices (s 195), infringement notices (Magistrates Court (Work Health and Safety Infringement Notices) Regulation 2011 (ACT)), orders for remedial action (ss 211 and 212), injunctions (s 215) and through enforcement provisions (s 216(1)).

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.

Workers' compensation matters are regulated under the *Workers Compensation Act 1951*. Appropriate penalties are also provided for breaches of this Act.

**Article 10**

This Convention does not affect more favourable provisions applicable to homeworkers under other international labour Conventions.

**Article 11**

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

**Article 12**

1. This Convention shall be binding only upon those Members of the International Labour Organization whose ratifications have been registered with the Director-General of the International Labour Office.
2. It shall come into force 12 months after the date on which the ratifications of two Members have been registered with the Director-General.
3. Thereafter, this Convention shall come into force for any Member 12 months after the date on which its ratification has been registered.

**Article 13**

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.
2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

**Article 14**

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organization of the registration of all ratifications and denunciations communicated by the Members of the Organization.
2. When notifying the Members of the Organization of the registration of the second ratification, the Director-General shall draw the attention of the Members of the Organization to the date upon which the Convention shall come into force.

**Article 15**

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations, for registration in accordance with article 102 of the Charter of the United Nations, full particulars of all ratifications and acts of denunciation registered by the Director-General in accordance with the provisions of the preceding Articles.

**Article 16**

At such times as it may consider necessary, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

**Article 17**

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides -

(a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 13 above, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force, this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

**Article 18**

The English and French versions of the text of this Convention are equally authoritative.

NO RESPONSE REQUIRED