

Prohibition of adverse, coercive, or misleading conduct**108 Meaning of adverse conduct (think about discrimination)**

If — the person (e.g. manager or employer) —

(i) dismisses a worker who is an employee; or (ii) terminates a contract for services with a worker; or (iii) refuses or omits to employ or engage any person on work of any description that is available and for which that person is qualified; or (iv) refuses or omits to offer or afford to the worker the same terms of employment or engagement conditions of work, fringe benefits, or opportunities for training, promotion, and transfer as are made available for other workers of the same or substantially similar qualifications, experience, or skills employed or engaged in the same or substantially similar circumstances; or (v) subjects the worker to any detriment, in circumstances in which other workers employed or engaged by the person on work of that description are not or would not be subjected to such detriment; or (vi) retires the worker, or requires or causes the worker to retire or resign or terminate a contract for services; or (b) the person terminates a commercial arrangement with another person; or (c) the person refuses or fails to enter into a commercial arrangement with another person.

Sections 109 - 110 Prohibition on adverse conduct

A person must not engage in adverse conduct for a prohibited health and safety reason. Adverse conduct may be described as conduct in relationship to proposed roles as Safety Rep or Safety Committee or another role under this Act and the person contrives an issue with or raises, has raised, or proposes to raise, an issue or concern about health and safety with— (i) the PCBU; or (ii) the regulator or an inspector; or (iii) a worker's representative; or (iv) another worker; or (v) a health and safety representative; or (vi) a member of a health and safety committee; or (vii) any other person who has a duty under this Act in relation to the matter; or (viii) any other person performing a function or exercising a power under this Act; or (i) is involved in, has been involved in, or proposes to be involved in, resolving a

health and safety issue under this Act; or (j) is taking action, has taken action, or proposes to take action, to seek compliance by any person with any duty or obligation under this Act; or has ceased work. **Sec 112 Prohibition on coercion or inducement** A person must not organise or take, or threaten to organise or take, any action against another person with intent to coerce or induce the other person/s.



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HEALTH & SAFETY REFORM ACT 2013 DRAFT FURTHER MATTERS

Section 85 Health and Safety Committees

A PCBU at a workplace must establish a health and safety committee for the business or undertaking or part of the business or undertaking—

- (a) within 2 months after being requested to do so by—
 - (i) a health and safety representative for a work group of workers carrying out work at that workplace; or
 - (ii) 5 or more workers at that workplace; or
 - (b) if required by the regulations, within the time prescribed by the regulations.
- (2) A PCBU at a workplace may establish a health and safety committee for the workplace or part of the workplace on the person's own initiative.

Section 86 Constitution of Health and Safety Committee

- (1) The constitution of a health and safety committee is to be agreed between the PCBU and the workers at the workplace.
- (2) If there is a health and safety representative at a workplace, that representative, if he or she consents, is a member of the committee.
- (3) If there are 2 or more health and safety representatives at a workplace, those representatives may choose 1 or more of their number (who consent) to be members of the committee.
- (4) At least half of the members of the committee must be workers who are not nominated by the PCBU.

Section 87 Functions of Health and Safety Committee

- (a) to facilitate co-operation between the PCBU and workers in instigating, developing, and carrying out measures designed to ensure the workers' health and safety at work; and
- (b) to assist in developing standards, rules, and procedures relating to health and safety that are to be followed or complied with at the workplace; and
- (c) any other functions that are— (i) agreed between the PCBU and the committee; or (ii) prescribed by the regulations.

Section 88 Meetings of Health and Safety Committee

Must be held at least every 3 months at a time suitable to majority of members.

Section 89 Duties of PCBU in relation to committee

- (1) A PCBU must allow each member of the health and safety committee to spend the time that is reasonably necessary to attend meetings of the committee or to carry out functions as a member of the committee.

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(2) Any time that a member of a health and safety committee spends for the purposes must be with the pay that he or she would otherwise be entitled to receive for performing his or her normal duties during that period.

(3) A PCBU must allow the health and safety committee for a workplace to have access to information that the PCBU has relating to (a) hazards (including associated risks) at the workplace; and (b) the health and safety of the workers at the workplace.

Section 91 Right of worker to cease unsafe work

(1) A worker may cease, or refuse to carry out, work if the worker believes that carrying out the work would expose the worker, or any other person, to a serious risk to the worker's or other person's health or safety arising from an immediate or imminent exposure to a hazard.

Section 95 Provisional improvement notices

- (1) This section applies if a health and safety representative reasonably believes that a PCBU is contravening, or is likely to contravene, a provision of this Act or the regulations.
- (2) The health and safety representative may issue a provisional improvement notice requiring the person to — (a) remedy the contravention; or (b) prevent a likely contravention from occurring; or (c) remedy the things or operations causing the contravention or likely contravention.
- (3) However, the health and safety representative must not issue a provisional improvement notice to a person unless he or she has first consulted the person.
- (4) A health and safety representative must not issue a provisional improvement notice in relation to a matter if an inspector has already issued an improvement notice or prohibition notice in relation to the same matter.

Section 96 Competency requirements

A health and safety representative must not issue a provisional improvement notice unless the representative has— completed training prescribed by or under the regulations;

Section 54 Request for election of health and safety representatives

A worker who carries out work for a business or undertaking may ask the PCBU to facilitate the conduct of an election for 1 or more health and safety representatives to represent workers who carry out work for that business or undertaking.

Section 55 Requirement of PCBU to determine work groups

(1) If a worker makes a request under section 54, the PCBU must facilitate the representation of workers by the determination of 1 or more work groups.



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(3) However, the health and safety representative must not issue a provisional improvement notice to a person unless he or she has first consulted the person.

(4) A health and safety representative must not issue a provisional improvement notice in relation to a matter if an inspector has already issued an improvement notice or prohibition notice in relation to the same matter.

Section 97 A provisional improvement notice must state—

(a) that the health and safety representative believes the person is contravening, or is likely to contravene, a provision of this Act or the regulations (as the case may be); and (b) the provision the representative believes is being, or is likely to be, contravened; and (c) briefly, how the provision is being, or is likely to be, contravened; and (d) the day, at least 8 days after the notice is issued, by which the person is required to remedy the contravention or likely contravention.

Section 98 The notice may give directions to remedy contravention

(1) A provisional improvement notice may include directions relating to — (a) the measures to be taken to remedy the contravention or prevent the likely contravention; or (b) the matters or activities causing the contravention or likely contravention to which the notice relates. (2) A direction included in a provisional improvement notice may — (a) refer to an approved code of practice; (b) offer the person to whom it is issued a choice of ways in which to remedy the contravention or prevent the likely contravention.

Sections 99-102 A Safety Rep may amend or cancel the improvement notice. A person to whom a provisional improvement notice is issued must, as soon as practicable, display a copy of the notice in a prominent place at or near the workplace, or part of the workplace, at which work is being carried out that is affected by the notice. (2) A person must not intentionally remove, destroy, damage, or deface a notice displayed during the period that the notice is in force. A person receiving an improvement notice, may within 7 days refer it to an Inspector for review.

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