

### Variations from the model WHS Act and WHS Regulations in South Australia

	Model WHS Act/Regulations	WHS Act (SA)
1	Provides that in managing risks, a person must eliminate or minimise risks to health and safety, so far as is reasonably practicable (section 17 (1), model WHS Act).	Provides that a person must eliminate or minimise risks to health and safety, so far as is reasonably practicable, but only to the extent to which they have the capacity to influence and control the matter (section 17(2), WHS Act).  <b>This provision has been operative since 1 January 2013.</b>
2	Provides for prosecution exceptions for: <ul style="list-style-type: none"> <li>- volunteers so that volunteers cannot be prosecuted for a failure to comply with a health and safety duty, other than as a worker or 'other' person at the workplace; and (section 34 (1), model WHS Act).</li> <li>- unincorporated associations (although unincorporated associations may be PCBU's for the purposes of the model WHS Act, their failure to comply with a duty or obligation under the WHS Act does not constitute an offence and cannot attract a civil penalty)(section 34(2), model WHS Act).</li> </ul>	The WHS Act (SA) includes an additional provision to clarify that volunteer officers in mixed residential/commercial strata/community titles corporations will not be liable for a breach of officer duties under the WHS Act (section 34, WHS Act).  <b>This provision has been operative since 1 January 2013.</b>
3	Provides that an HSR is entitled to five training days in the first year, one in the second and one in third (regulation 21, model WHS Regulations).	The WHS Act (SA) provides for an increase in the number of training days for HSRs to five in the first year, three in the second and two in the third (section 72(9), WHS Act).  <b>This provision has been operative since 1 January 2013.</b>
4	Allows for a WHS entry permit holder (EPH) to enter a workplace to inquire into a suspected WHS contravention, where the contravention is in relation to a 'relevant worker'. The EPH must reasonably suspect a contravention is	The WHS Act (SA) includes certain policies and procedures relevant to when a EPH seeks to exercise a right of entry to require into suspected contraventions of the WHS Act (section 117, WHS Act).

## Attachment 1

	Model WHS Act/Regulations	WHS Act (SA)
	<p>occurring or has occurred when entering for this purpose. (section 117, model WHS Act).</p> <p>Prior to recent changes, the model WHS laws provided that an EPH was not required to give notice before entering a workplace. However, amendments to the model WHS Act now require an EPH to provide a minimum of 24 hours' and a maximum of 14 days' notice to the relevant PCBU and the person with management or control of the workplace before entry takes place.(section 68 (3B), model WHS Act).</p>	<p>This includes providing that EPHs must give consideration as to whether it is reasonably practicable to notify the regulator prior to entry in order to provide an opportunity for an inspector to attend at the workplace at the time of entry (section 117(3)). However, if the EPH is not accompanied by an inspector, they must furnish a report on the outcome of his or her inquiries at the workplace to the regulator, in accordance with the WHS Regulations, after the entry has occurred (section 117(6)), WHS Act).</p> <p><b>This provision has been operative since 1 January 2013.</b></p>
5	<p>Clause 118 provides that for the purposes of an inquiry into a suspected contravention, an EPH may enter any workplace for the purpose of inspecting, or making copies of:</p> <ul style="list-style-type: none"> <li>- employee records that are directly relevant to a suspected contravention; or</li> <li>- other documents that are directly relevant to a suspected contravention and that are not held by the relevant PCBU.</li> </ul> <p>Before doing so, the EPH must give notice of the proposed entry to the person from whom the documents are requested and the relevant PCBU. This notice must be given during usual working hours at least 24 hours, but not more than 14 days, before the entry (section 120, model WHS Act).</p>	<p>As per the model WHS laws, an EPH can enter a workplace for the purpose of inspecting or making copies of employee records and other documents directly relevant to a suspected contravention.</p> <p>However, the WHS Act (SA) provides that the right of an EPH to require copies of a document is subject to any direction that may be given by an inspector. This may include a direction that copies of a document not be required to be made and provided to the EPH (section 120(6), WHS Act).</p> <p><b>This provision has been operative since 1 January 2013.</b></p>

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	Model WHS Act/Regulations	WHS Act (SA)
6	<p>The model WHS Act does not provide protection against self-incrimination (section 172, model WHS Act) but instead provides for use immunity.</p>	<p>The WHS Act (SA) provides for a protection against self-incrimination (section 172, WHS Act).</p> <p>The provision states that a person must answer questions or produce information or documents unless to do so would tend to incriminate or expose them to an offence.</p> <p><b>This provision has been operative since 1 January 2013.</b></p>
7	<p>Provides that the Minister may approve a Code of Practice (COP) for the purposes of the Act and may vary or revoke an approved COP (section 274(1), model WHS Act).</p> <p>However, the Minister may only approve, vary or revoke a COP if it was developed by a process that involves consultation between the Governments of the Commonwealth and each State and Territory, unions, and employer organisations (section 274(2), model WHS Act).</p> <p>An approval of a COP, or a variation or revocation of an approved COP, takes effect when notice of it is published in the Government Gazette, or on date specified in the approval, variation or revocation (section 274(4), model WHS Act).</p>	<p>As per the model WHS laws, the Minister may approve a COP for the purposes of the Act and may vary or revoke an approved COP.</p> <p>However, the WHS Act (SA) (<b>since 1 January 2013</b>) includes additional requirements in relation to approved COPs. These include:</p> <ul style="list-style-type: none"> <li>- a requirement for the Small Business Commissioner to be consulted before a Code of Practice is submitted to the Minister (section 274(3)), WHS Act);</li> <li>- a requirement that the Industrial Relations Consultative Council (formerly the SafeWork SA Advisory Council) recommend to the Minister that a COP is approved, varied or revoked (section 274(2), WHS Act);</li> <li>- a requirement that COPs be subject to disallowance by Parliament (section 274(8), WHS Act).</li> </ul> <p><b>On 19 November 2015</b>, as result of the <i>Statutes Amendment (Industrial Relations Consultative Council Act 2015</i>, section 274 of the WHS Act was amended to reflect that the SafeWork Advisory Council was replaced by the Industrial Relations Consultative Council. The Amendment Act also made a consequential amendment to section 274, integrating the small business commissioner's role in the approval of work health and safety codes of practice, creating a streamlined, less bureaucratic consultation process.</p>