

## APPENDIX 28

### **INSTRUMENT OF DELEGATION UNDER THE WORK HEALTH AND SAFETY ACT 2012**

#### **NOTES**

1. Conditions or Limitations: conditions or limitations may apply to the delegations contained in this Instrument. Refer to the Schedule of Conditions at the back of this document.
2. Refer to the relevant Council resolution(s) to identify when these delegations were made, reviewed and or amended.

#### **POWERS AND FUNCTIONS DELEGATED IN THIS INSTRUMENT**

<b>51. Determination of work groups</b>
(1) The power pursuant to Section 51(1) of the Work Health and Safety Act 2012 ( <b>the Act</b> ), to, if a request is made under Section 50 of the Act, facilitate the determination of one or more work groups of workers.
<b>52. Negotiations for agreement for work group</b>
(1) The power pursuant to Section 52(1) of the Act, and in accordance with Sections 52(2), (3) and (6) of the Act, to determine a work group by negotiation and agreement with the workers who will form the work group or their representatives.
(4) The power pursuant to Section 52(4) of the Act to, in relation to an agreement concerning the determination of a work group or groups, at any time, negotiate a variation of the agreement in accordance with Section 52(6) of the Act.
<b>54. Failure of negotiations</b>
(1) The power pursuant to Section 54(1) of the Act to, if there is a failure of negotiations (including negotiations concerning the variation of an agreement), ask the regulator to appoint an inspector for the purposes of Section 54 of the Act.

<b>55. Determination of work groups of multiple businesses</b>
(2) The power pursuant to Section 55(2) of the Act to determine the particulars of the work groups by negotiation and agreement, in accordance with Section 56 of the Act, between each of the persons conducting the businesses or undertakings and the workers.
(3) The power pursuant to Section 55(3) of the Act to, in relation to an agreement concerning the determination of a work group or groups, at any time, negotiate a variation of the agreement.
<b>56. Negotiation of agreement for work groups of multiple businesses</b>
(3) The power pursuant to Section 56(3) of the Act to, if agreement cannot be reached on a matter relating to the determination of a work group (or a variation of an agreement) within a reasonable time after negotiations commence under Subdivision 3 of Division 3, Part 5 of the Act, ask the regulator to appoint an inspector to assist the negotiations in relation to that matter.
<b>58. Withdrawal from negotiations or agreement involving multiple businesses</b>
(1) The power pursuant to Section 58(1) of the Act to, in relation to a negotiation for an agreement, or an agreement, concerning a work group under Subdivision 3 of Division 3, Part 5 of the Act, withdraw from the negotiation or agreement at any time by giving reasonable notice (in writing) to the other parties.
(2) The power pursuant to Section 58(2) of the Act to, if a party withdraws from an agreement concerning a work group under Subdivision 3 of Division 3, Part 5 of the Act, negotiate a variation to the agreement in accordance with Section 56 of the Act.
<b>65. Disqualification of health and safety representatives</b>
(1) The power pursuant to Section 65(1) of the Act, to make an application to SAET to disqualify a health and safety representative on the ground that the representative has:
(a) exercised a power or performed a function as a health and safety representative for an improper purpose; or
(b) used or disclosed any information he or she acquired as a health and safety representative for a purpose other than in connection with the role of health and safety representative,
where the Council is adversely affected by the exercise of a power or the performance of a function referred to in Section 65(1)(a) of the Act or the

use or disclosure of information referred to in Section 65(1)(b) of the Act.
<b>70. General obligations of person conducting business or undertaking</b>
(1) The power pursuant to Section 70(1) of the Act, to
(a) consult, so far as is reasonably practicable, on work health and safety matters with any health and safety representative for a work group of workers carrying out work for the Council; and
(b) confer with a health and safety representative for a work group, whenever reasonably requested by the representative, for the purpose of ensuring the health and safety of the workers in the work group; and
(c) allow any health and safety representative for the work group to have access to information that the Council has relating to:
(i) hazards (including associated risks) at the workplace affecting workers in the work group; and
(ii) the health and safety of the workers in the work group; and
(d) with the consent of a worker that the health and safety representative represents, allow the health and safety representative to be present at an interview concerning work health and safety between the worker and:
(i) an inspector; or
(ii) the Council or the Council's representative; and
(e) with the consent of one or more workers that the health and safety representative represents, allow the health and safety representative to be present at an interview concerning work health and safety between a group of workers, which includes the workers who gave the consent, and:
(i) an inspector; or
(ii) the Council or the Council's representative; and
(f) provide any resources, facilities and assistance to a health and safety representative for the work group that are reasonably necessary or prescribed by the regulations to enable the representative to exercise his or her powers or perform his or her functions under the Act.
(g) allow a person assisting a health and safety representative for the

work group to have access to the workplace if that is necessary to enable the assistance to be provided; and
(h) permit a health and safety representative for the work group to accompany an inspector during an inspection of any part of the workplace where a worker in the work group works; and
(i) provide any other assistance to the health and safety representative for the work group that may be required by the regulations.
<b>71. Exceptions for obligations under Section 70(1)</b>
(5) The power pursuant to Section 71(5) of the Act to refuse on reasonable grounds to grant access to the workplace to a person assisting a health and safety representative for a work group.
<b>72. Obligation to train health and safety representatives</b>
(1) The power pursuant to Section 72(1) of the Act to, consult with a health and safety representative in relation to the health and safety representative attending a course of training in work health and safety that is subject to Section 72(6), chosen by the health and safety representative.
(3) The power pursuant to Section 72(3) of the Act to:
(a) as soon as practicable within the period of 3 months after the request is made, allow the health and safety representative time off work to attend the course of training; and
(b) pay the course fees and any other reasonable costs associated with the health and safety representative's attendance at the course of training.
(6) The power pursuant to Section 72(6) of the Act to, if agreement cannot be reached between the Council or Council's delegate and the health and safety representative within the time required by Section 72(3) of the Act as to the matters set out in Sections 72(1)(c) and (3) of the Act, ask the regulator to appoint an inspector to decide the matter.
<b>73. Obligation to share costs if multiple businesses or undertakings</b>
(1) The power pursuant to Section 73(1) of the Act to, if a health and safety representative, or deputy health and safety representative (if any), represents a work group of workers carrying out work for the Council and one or more other person conducting businesses or undertakings, agree that:
(a) the costs of the representative exercising powers and performing

functions under the Act; and
(b) the costs referred to in Section 72(3)(b) of the Act,
for which the Council or any of the other persons conducting those businesses or undertakings are liable, are to be apportioned between each of those persons otherwise than equally.
(2) The power pursuant to Section 73(2) of the Act, to vary an agreement to apportion the costs in another way, at any time by negotiation and agreement between each of the persons conducting the businesses or undertakings.
<b>75. Health and safety committees</b>
(2) The power pursuant to Section 75(2) of the Act to, establish a health and safety committee for the workplace or part of the workplace.
<b>76. Constitution of committee</b>
(1) The power pursuant to Section 76(1) of the Act and subject to Sections 76(2) to (4) of the Act, to agree the constitution of a health and safety committee with the workers at the workplace.
(5) The power pursuant to Section 76(5) of the Act to, if agreement is not reached under Section 76 within a reasonable time, ask the regulator to appoint an inspector to decide the matter.
<b>82. Referral of issue to regulator for resolution by inspector</b>
(2) The power pursuant to Section 82(2) of the Act to, ask the regulator to appoint an inspector to attend the workplace to assist in resolving the issue.
<b>87. Alternative work</b>
The power pursuant to Section 87 of the Act to, if a worker ceases work under Division 6, Part 5 of the Act, direct the worker to carry out suitable alternative work at the same or another workplace if that work is safe and appropriate for the worker to carry out until the worker can resume normal duties.
<b>89. Request to regulator to appoint inspector to assist</b>
The power pursuant to Section 89 of the Act to ask the regulator to appoint an inspector to attend the workplace to assist in resolving the issue arising in relation to the cessation of work.
<b>100. Request for review of provisional improvement notice</b>
(1) The power pursuant to Section 100(1) of the Act, to, within 7 days after a

<p>provisional improvement notice is issued to the Council or a worker who carries out work at the Council, ask the regulator to appoint an inspector to review the notice.</p>
<p><b>141. Application for assistance of inspector to resolve dispute</b></p>
<p>The power, pursuant to Section 141 of the Act, to, if a dispute arises about the exercise or purported exercise by a WHS entry permit holder of a right of entry under the Act, ask the regulator to appoint an inspector to attend the workplace to assist in resolving the dispute.</p>
<p><b>142. Authorising authority may deal with a dispute about a right of entry under this Act</b></p>
<p>(4) The power pursuant to Section 142(4) of the Act to apply to the authorising authority to deal with a dispute where the dispute relates to the Council.</p>
<p><b>180. Return of seized things</b></p>
<p>(1) The power pursuant to Section 180(1) of the Act to, if a seized thing has not been forfeited, and the Council is the person entitled to the thing, apply to the regulator for the return of the thing after the end of 6 months after it was seized.</p>
<p><b>181. Access to seized things</b></p>
<p>(1) The power pursuant to Section 181(1) of the Act to, until a seized thing is forfeited or returned, inspect it and, if it is a document, to make copies of it at all reasonable times.</p>
<p><b>224. Application for internal review</b></p>
<p>(1) The power pursuant to Section 224(1) of the Act, to, where the Council is an eligible person in relation to a reviewable decision, other than a decision made by the regulator or a delegate of the regulator, apply to the regulator for review (an internal review) in accordance with Section 224(2) of the Act, of the decision within:</p>
<p>(a) the prescribed time after the day on which the decision first came to the Council's notice; or</p>
<p>(b) such longer period as the regulator allows.</p>

<b>229. Application for external review</b>
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(1) The power pursuant to Section 229(1) of the Act, to, where the Council is an eligible person, apply to SAET under Part 3 Division 1 of the South Australian Employment Tribunal Act 2014, in accordance with Section 229(2) of the Act, for a review of:
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(a) a reviewable decision made by the regulator; or
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(b) a decision made, or taken to have been made, on an internal review.
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**SCHEDULE OF CONDITIONS**

**CONDITIONS OR LIMITATIONS  
APPLICABLE TO DELEGATIONS  
CONTAINED IN THIS INSTRUMENT**

Section(s) in Act to which conditions/ limitations apply	Conditions / Limitations
Nil	