

South Australia

# Occupational Health, Safety and Welfare Act 1986

An Act to provide for the health, safety and welfare of persons at work; and for other purposes.

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**The Parliament of South Australia enacts as follows:**

## **Part 1—Preliminary**

### **1—Short title**

This Act may be cited as the *Occupational Health, Safety and Welfare Act 1986*.

### **3—Objects of Act**

The chief objects of this Act are—

- (a) to secure the health, safety and welfare of persons at work; and
- (b) to eliminate, at their source, risks to the health, safety and welfare of persons at work; and
- (c) to protect the public against risks to health or safety arising out of or in connection with—
  - (i) the activities of persons at work; or
  - (ii) the use or operation of various types of plant;
- (d) to involve employees and employers in issues affecting occupational health, safety and welfare; and
- (e) to encourage registered associations to take a constructive role in promoting improvements in occupational health, safety and welfare practices and assisting employers and employees to achieve a healthier and safer working environment.

### **4—Interpretation**

- (1) In this Act, unless the contrary intention appears—

***accident*** means an unplanned occurrence or incident that causes or contributes to personal injury or damage to property;

***Advisory Committee*** means the SafeWork SA Advisory Committee established under Part 2;

***appointed member*** of the Advisory Committee means a member of the Advisory Committee appointed by the Governor;

***approved code of practice*** means a code of practice approved by the Minister pursuant to section 63;

***business day*** in relation to a particular workplace means any day on which work is normally carried out at the workplace;

***contract of service*** means—

- (a) a contract under which one person is employed by another;
- (b) a contract of apprenticeship;
- (c) a contract, arrangement or understanding under which a person receives on-the-job training in a trade or vocation from another;

**Department** means the administrative unit of the Minister to whom the administration of this Act is committed;

**the designated person** means—

- (a) in relation to mines to which the *Mines and Works Inspection Act 1920* applies—the Chief Inspector of Mines;
- (b) in relation to operations to which the *Petroleum Act 2000*, the *Petroleum (Submerged Lands) Act 1982* or the *Offshore Minerals Act 2000* applies—the Director-General of Mines and Energy;
- (c) in any other case—a public service employee authorised by the Minister to exercise the powers of the designated person under this Act;

**Director** means the person for the time being holding, or acting in, the position of Executive Director of that part of the Department that is directly involved in the administration and enforcement of this Act;

**employee** means a person who is employed under a contract of service or who works under a contract of service;

**employer** means a person by whom an employee is employed under a contract of service or for whom work is done by an employee under a contract of service;

**health and safety committee** means a health and safety committee established under Part 4;

**health and safety representative** means a health and safety representative elected in accordance with Part 4;

**Industrial Commission** means the Industrial Relations Commission of South Australia;

**Industrial Court** means the Industrial Relations Court of South Australia;

**inspector** means—

- (a) in relation to mines to which the *Mines and Works Inspection Act 1920* applies—an inspector of mines under that Act;
- (b) in relation to operations to which the *Petroleum Act 2000* applies—an authorised officer under that Act;
- (c) in relation to operations to which the *Petroleum (Submerged Lands) Act 1982* applies—an inspector under that Act;
- (ca) in relation to operations to which the *Offshore Minerals Act 2000* applies—an inspector under that Act;
- (d) in any other case—a public service employee authorised by the Minister to exercise the powers of an inspector under this Act;

**metropolitan area** means the area comprised by—

- (a) Metropolitan Adelaide as defined in the Development Plan compiled under the *Development Act 1993*; and
- (b) the City of Adelaide and the Corporation of the Town of Gawler;

**occupier** in relation to a place means a person who has the management or control of the place;

**officer** in relation to a body corporate means—

- (a) a member of the governing body of the body corporate; or
- (b) an executive officer of the body corporate; or
- (c) a receiver or manager of any property of the body corporate; or
- (d) a liquidator;

**plant** includes—

- (a) any machinery, equipment, appliance, implement or tool;
- (b) without limiting the application of this Act to any plant used at work or at any workplace, any plant to which this Act extends by virtue of Schedule 2;
- (c) any component, fitting, connection, mounting or accessory used in or in conjunction with any of the above;

**record** means a record of any kind and includes a disk, tape or other article from which information is capable of being reproduced (with or without another article or device);

**registered association** means—

- (a) an association registered under the *Fair Work Act 1994* or the *Industrial Relations Act 1988* of the Commonwealth; or
- (b) the United Trades and Labor Council;

**review committee** means a review committee constituted under Part 7;

**safe** connotes safe from injury and risks to health;

**ship** includes a boat, vessel or craft;

**South Australian ship** means a ship—

- (a) that is registered in the State; or
- (b) that is owned or under charter by the Crown; or
- (c) that is owned or under charter by a body corporate or other person—
  - (i) whose principal office or place of business is in the State; or
  - (ii) whose principal office or place of business with respect to the control or management of the ship is in the State;

**substance** means any natural or artificial substance, whether in solid, liquid or gaseous form;

**WorkCover** means the WorkCover Corporation of South Australia;

**work group** means a group of employees constituted as a work group for the purposes of Part 4;

**work-related injury** means—

- (a) an injury, disease or disability; or
- (b) the loss or destruction of, or damage to, an artificial limb or other prosthesis or a medical or surgical aid or appliance; or
- (c) any death,

that is attributable to work and includes the aggravation, exacerbation or recurrence of a prior work-related injury;

**workplace** means any place (including any aircraft, ship or vehicle) where an employee or self-employed person works and includes any place where such a person goes while at work.

- (2) For the purposes of this Act, where a person (the **contractor**) is engaged to perform work for another person (the **principal**) in the course of a trade or business carried on by the principal, the contractor, and any person employed or engaged by the contractor to carry out or to assist in carrying out the work, will be taken to be employed by the principal but the principal's duties under this Act in relation to them extend only to matters over which the principal has control or would have control but for some agreement to the contrary between the principal and the contractor.
- (3) For the purposes of this Act, where a person, in connection with a trade or business carried on by the employer, performs work for an employer gratuitously, the person will be taken to be employed by the employer.
- (4) The following matters are aspects of occupational health, safety and welfare:
  - (a) the general well-being of employees while at work;
  - (b) the prevention of work-related injuries and work-related fatalities;
  - (c) the investigation of the causes of work-related injuries and work-related fatalities;
  - (d) the rehabilitation and retraining of people who have suffered work-related injuries.
- (4a) The safe operation or use of any plant referred to in Schedule 2 will be taken to be an aspect of occupational health, safety and welfare.
- (5) For the purposes of this Act, a reference to a divisional fine in column 1 of the following table means—
  - (a) in the case of an offence where the defendant is a body corporate or an administrative unit in the Public Service of the State—a fine not exceeding the amount in column 3; or
  - (b) in any other case—a fine not exceeding the amount in column 2.

Division 1 fine	\$200 000	\$600 000
Division 2 fine	\$100 000	\$300 000
Division 3 fine	\$40 000	\$120 000
Division 4 fine	\$30 000	\$90 000
Division 5 fine	\$20 000	\$60 000
Division 6 fine	\$10 000	\$30 000
Division 7 fine	\$5 000	\$15 000

## 5—Application of Act

- (1) This Act or specified provisions of this Act do not apply in relation to—
  - (a) work or classes of work; or

- (b) employees or classes of employees,  
excluded by regulation from the application of this Act or specified provisions of this Act.
- (2) Subject to any regulations made for the purposes of subsection (1), this Act applies in relation to work on a South Australian ship whether or not the ship is within the coastal waters of the State.
- (3) This Act binds the Crown in right of the State and also, so far as the legislative power of the State extends, in all its other capacities.

## **6—Non-derogation**

- (1) The provisions of this Act are in addition to and do not derogate from the provisions of any other Act.
- (2) The provisions of this Act do not limit or derogate from any civil right or remedy and compliance with this Act does not necessarily indicate that a common law duty of care has been satisfied.



## Part 2—The SafeWork SA Advisory Committee

### Division 1—Establishment of Advisory Committee

#### 7—Establishment of Advisory Committee

The *SafeWork SA Advisory Committee* is established.

### Division 2—The Advisory Committee's membership

#### 8—Composition of the Advisory Committee

- (1) The Advisory Committee consists of 11 members of whom—
  - (a) 9 will be appointed by the Governor and of these—
    - (i) 1 will be the presiding member appointed on the recommendation of the Minister; and
    - (ii) 4 will be persons who, in the opinion of the Minister, are suitable to represent the interests of employers (1 being a person considered by the Minister to be suitable to represent the interests of the public sector as an employer), appointed on the recommendation of the Minister after the Minister has consulted with Business SA, and with associations representing the interests of employers determined to be appropriate by the Minister; and
    - (iii) 4 will be persons who, in the opinion of the Minister, are suitable to represent the interests of employees (1 being a person considered by the Minister to be suitable to represent the interests of employees in the public sector), appointed on the recommendation of the Minister after the Minister has consulted with the United Trades and Labor Council, and with other associations representing the interests of employees determined to be appropriate by the Minister; and
  - (b) 1 will be the Director (*ex officio*); and
  - (c) 1 will be the Chief Executive of WorkCover (*ex officio*).
- (2) In proposing persons for appointment to the Advisory Committee, an organisation or association consulted under subsection (1) should seek to promote gender balance, and diversity, in the membership of the Advisory Committee.
- (3) Subject to subsection (4), the Minister may appoint a suitable person to be a deputy of a member of the Advisory Committee and to act as a member of the Advisory Committee during any period of absence of the member.
- (4) During the absence of the presiding member of the Advisory Committee, the Director will act in the position of the presiding member (and if the Director is unavailable then a member of the Advisory Committee appointed by the remaining members will act in the position of presiding member).

## **9—Terms and conditions of office**

- (1) An appointed member of the Advisory Committee will hold office on conditions, and for a term (not exceeding 3 years), determined by the Governor and, on the expiration of a term of appointment, is eligible for re-appointment.
- (2) The Governor may remove an appointed member from office for—
  - (a) breach of, or non-compliance with, a condition of appointment; or
  - (b) mental or physical incapacity to carry out duties of office satisfactorily; or
  - (c) neglect of duty; or
  - (d) dishonourable conduct.
- (3) The office of an appointed member becomes vacant if the member—
  - (a) dies; or
  - (b) completes a term of office and is not re-appointed; or
  - (c) resigns by written notice addressed to the Minister; or
  - (d) is found guilty of an indictable offence; or
  - (e) is found guilty of an offence against subsection (6); or
  - (f) is removed from office by the Governor under subsection (2).
- (4) On the office of an appointed member of the Advisory Committee becoming vacant, a person must be appointed, in accordance with this Act, to the vacant office.
- (5) The Minister must ensure that a vacant office is filled within 6 months after the vacancy occurs.
- (6) A member of the Advisory Committee who has a direct or indirect personal or pecuniary interest in a matter under consideration by the Advisory Committee—
  - (a) must, as soon as practicable after becoming aware of the interest, disclose the nature and extent of the interest to the Advisory Committee; and
  - (b) must not take part in a deliberation or decision of the Advisory Committee on the matter and must not be present at a meeting of the Advisory Committee when the matter is under consideration.

Maximum penalty: Division 5 fine or imprisonment for two years.

- (7) Subsection (6) operates subject to the qualification that a member of the Advisory Committee who has made a disclosure under that subsection may, with the permission of a majority of the members of the Advisory Committee who may vote on the matter, attend or remain at the meeting in order to ask or answer questions, or to provide any other information or material that may be relevant to the deliberations of the Advisory Committee, provided that the member then withdraws from the room and does not in any other way take part in any deliberations or vote on the matter.
- (8) The court by which a person is convicted of an offence against subsection (6) may, on the application of an interested person, make an order avoiding a contract to which the non-disclosure relates and for restitution of property passing under the contract.

## 10—Allowances and expenses

- (1) An appointed member of the Advisory Committee is entitled to fees, allowances and expenses approved by the Governor.
- (2) The amount of any fees, allowances or expenses paid under subsection (1) will be recoverable from the Compensation Fund under the *Workers Rehabilitation and Compensation Act 1986* under a scheme established or approved by the Treasurer.

## 11—Validity of acts and immunity of members

- (1) An act or proceeding of the Advisory Committee is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.
- (2) No personal liability attaches to a member of the Advisory Committee for an act or omission by the member or the Advisory Committee in good faith in performance, exercise or discharge, or purported performance, exercise or discharge, of the member's or the Advisory Committee's functions, powers or duties under this Act.
- (3) A liability that would, but for subsection (2), lie against a member of the Advisory Committee will lie instead against the Crown.

## Division 3—Proceedings

### 12—Proceedings

- (1) Six members of the Advisory Committee, of whom—
  - (a) 1 is the presiding member, or the Director acting in the absence of the presiding member (unless the Director is unavailable); and
  - (b) at least 2 are members appointed to represent the interests of employers; and
  - (c) at least 2 are members appointed to represent the interests of employees,constitute a quorum of the Advisory Committee.
- (2) When a matter arises for decision at a meeting of the Advisory Committee—
  - (a) the members appointed to represent the interests of employers or employees will each have a deliberative vote; and
  - (b) if those deliberative votes are equal, the person presiding at the meeting does not have a casting vote.
- (3) The members of the Advisory Committee holding office under section 8(1)(b) and (c) do not have a vote on any matter arising for decision at a meeting of the Advisory Committee.
- (4) A decision carried by a majority of the votes cast under subsection (2)(a) is a decision of the Advisory Committee.
- (5) A telephone or video conference between members of the Advisory Committee constituted in accordance with procedures determined by the Advisory Committee will, for the purposes of this section, be taken to be a meeting of the Advisory Committee at which the participating members are present.

- (6) A resolution of the Advisory Committee—
- (a) of which notice was given to all members of the Advisory Committee in accordance with procedures determined by the Advisory Committee; and
  - (b) in which a majority of the members of the Advisory Committee who would be entitled to vote under subsection (2) if the matter were before a meeting of the Advisory Committee have expressed their concurrence in writing or in some other manner determined by the Advisory Committee,
- will be taken to be a decision of the Advisory Committee made at a meeting of the Advisory Committee.
- (7) The Advisory Committee must cause an accurate record to be kept of its proceedings.
- (8) Subject to this Act, the proceedings of the Advisory Committee will be conducted in a manner determined by the Advisory Committee.

## **Division 4—Functions and powers**

### **13—Functions of the Advisory Committee**

- (1) The functions of the Advisory Committee are—
- (a) to keep the administration and enforcement of this Act, and any other legislation relevant to occupational health, safety and welfare, under review, and to make recommendations for change as the Advisory Committee thinks fit; and
  - (b) to advise the Minister (on its own initiative or at the request of the Minister) on—
    - (i) legislation, regulations, codes, standards and policies relevant to occupational health, safety and welfare; and
    - (ii) national and international developments in the field of occupational health, safety and welfare; and
    - (iii) the establishment of public inquiries and legislative and other reviews concerning issues associated with occupational health, safety and welfare; and
  - (c) to provide a forum for ensuring consultation and co-operation between WorkCover, associations representing the interests of employees or employers, industry associations, Government agencies and other public authorities, and other interested persons or bodies, in relation to occupational health, safety or welfare matters; and
  - (d) to prepare, adopt, promote or endorse prevention strategies, standards, codes, guidelines or guidance notes, and to recommend practices, to assist people in connection with occupational health, safety and welfare; and
  - (e) to promote education and training with respect to occupational health, safety and welfare, to develop, support, accredit, approve or promote courses or programmes relating to occupational health, safety or welfare, and to accredit, approve or recognise education providers in the field of occupational health, safety and welfare; and

- (f) to keep the provision of services relevant to occupational health, safety and welfare under review; and
  - (g) to collect, analyse and publish information and statistics relating to occupational health, safety or welfare; and
  - (h) to commission or sponsor research in relation to any matter relevant to occupational health, safety or welfare; and
  - (i) to initiate, co-ordinate or support projects and activities that promote public discussion or comment in relation to the development or operation of legislation, codes of practice and other material relevant to occupational health, safety or welfare; and
  - (j) to promote occupational health, safety or welfare programs, and to make recommendations with respect to the making of grants in support of projects and activities relevant to occupational health, safety or welfare; and
  - (k) to consult and co-operate with relevant national, State and Territory authorities; and
  - (l) to report to the Minister on any matter referred to the Advisory Committee by the Minister; and
  - (m) as it thinks fit, to consider any other matter relevant to occupational health, safety or welfare; and
  - (n) to carry out other functions assigned to the Advisory Committee by or under this or any other Act.
- (2) The Advisory Committee may, with the approval of the Minister—
- (a) perform functions conferred on the Advisory Committee by or under a law of the Commonwealth, another State or a Territory;
  - (b) confer (subject to conditions or limitations (if any) specified by the Minister) functions of the Advisory Committee on an authority established by or under a law of the Commonwealth, another State or a Territory.
- (3) The Advisory Committee should seek—
- (a) to ensure that South Australia takes advantage of initiatives that are recognised as being at the forefront of occupational health, safety and welfare practices; and
  - (b) to achieve a high level of consistency between occupational health, safety and welfare standards and requirements under this Act and corresponding standards and requirements under the laws of the Commonwealth, the other States and the Territories (insofar as to do so is in the best interests of the State).
- (4) The Advisory Committee should, as far as reasonably practicable, ensure that information provided for use in the workplace is in a language and form appropriate for those expected to make use of it.
- (5) If the Minister receives a recommendation from the Advisory Committee under this Act, the Minister should, within 2 months, respond in writing to the Advisory Committee in relation to the recommendation.

- (6) The Advisory Committee may establish such committees and subcommittees as it thinks fit (which may, but need not, consist of, or include, members of the Advisory Committee) to advise it on, or to assist it with respect to, any aspect of its functions under this Act.
- (7) The Advisory Committee has the power to do anything necessary, expedient or incidental to the performance of its functions.

## **Division 5—Use of staff and facilities**

### **14—Use of staff and facilities**

- (1) The Advisory Committee may, by agreement with the Minister responsible for an administrative unit in the Public Service, make use of the services of the staff, equipment or facilities of that administrative unit.
- (2) The Advisory Committee may, by agreement with the relevant agency or instrumentality, make use of the services of the staff, equipment or facilities of any other agency or instrumentality of the Crown.

## **Division 6—Related matters**

### **15—Confidentiality**

A member of the Advisory Committee who, as a member of the Advisory Committee, acquires information that—

- (a) the member knows to be of a commercially sensitive nature, or of a private confidential nature; or
- (b) the Advisory Committee classifies as confidential information,

must not divulge the information without the approval of the Advisory Committee.

Maximum penalty: Division 6 fine.

### **16—Annual report**

- (1) The Advisory Committee must, on or before 30 September in each year, provide to the Minister a report on the work of the Advisory Committee, and on other matters relevant to the operation and administration of this Act, for the financial year ending on the preceding 30 June.
- (2) A report under this section may be incorporated into the annual report of the Department.
- (3) The Minister must cause a copy of a report prepared under subsection (1) to be laid before both Houses of Parliament within 12 sitting days after the report is received by the Minister.

## **Part 3—General provisions relating to occupational health, safety and welfare**

### **19—Duties of employers**

- (1) An employer must, in respect of each employee employed or engaged by the employer, ensure so far as is reasonably practicable that the employee is, while at work, safe from injury and risks to health and, in particular—
  - (a) must provide and maintain so far as is reasonably practicable—
    - (i) a safe working environment;
    - (ii) safe systems of work;
    - (iii) plant and substances in a safe condition; and
  - (b) must provide adequate facilities of a prescribed kind for the welfare of employees at any workplace that is under the control and management of the employer; and
  - (c) must provide such information, instruction, training and supervision as are reasonably necessary to ensure that each employee is safe from injury and risks to health.

#### Maximum penalty:

- (a) for a first offence—Division 2 fine;
  - (b) for a subsequent offence—Division 1 fine.
- (3) Without derogating from the operation of subsection (1), an employer must so far as is reasonably practicable—
    - (a) monitor the health and welfare of the employer's employees in their employment with the employer, insofar as that monitoring is relevant to the prevention of work-related injuries; and
    - (b) keep information and records relating to work-related injuries suffered by employees in their employment with the employer and retain that information and those records for such period as may be prescribed; and
    - (c) provide information to the employer's employees (in such languages as are appropriate) in relation to health, safety and welfare in the workplace (including the names of persons to whom the employees may make inquiries and complaints about matters affecting occupational health, safety or welfare); and
    - (d) ensure that any employee who is to undertake work of a hazardous nature not previously performed by the employee receives proper information, instruction and training before he or she commences that work; and
    - (da) keep information and records relating to occupational health, safety or welfare training undertaken by any of the employer's employees during their employment with the employer; and

- (e) ensure that any employee who is inexperienced in the performance of any work of a hazardous nature receives such supervision as is reasonably necessary to ensure his or her health and safety; and
- (f) ensure that any employee who could be put at risk by a change in the workplace, in any work or work practice, in any activity or process, or in any plant—
  - (i) is given proper information, instruction and training before the change occurs; and
  - (ii) receives such supervision as is reasonably necessary to ensure his or her health and safety; and
- (g) ensure that any manager or supervisor is provided with such information, instruction and training as are necessary to ensure that each employee under his or her management or supervision is, while at work, so far as is reasonably practicable, safe from injury and risks to health; and
- (h) monitor working conditions at any workplace that is under the management and control of the employer; and
- (i) ensure that any accommodation, or eating, recreational or other facility, provided for the benefit of the employer's employees while they are at work, or in connection with the performance of their work, and under the management or control of the employer (either wholly or substantially), is maintained in a safe and healthy condition.

## **20—Employers' statements for health and safety at work**

- (1) Every employer must—
  - (a) prepare and maintain, in consultation with—
    - (i) health and safety committees; and
    - (ii) the employer's employees; and
    - (iii) any health and safety representative who represents those employees; and
    - (iv) on the application of an employee—a registered association of which that employee is a member; and
    - (v) if the employer so decides—any other registered association nominated by the employer of which the employer is a member,policies relating to occupational health, safety and welfare at the workplace; and
  - (b) —
    - (i) prepare and keep up to date a written statement setting out with reasonable particularity the arrangements, practices and procedures at the workplace protecting the health and safety of the employer's employees at the workplace; and
    - (ii) take reasonable steps to bring the contents of that statement to the notice of those employees.

Maximum penalty: Division 6 fine.

## **21—Duties of workers**

- (1) An employee must take reasonable care to protect the employee's own health and safety at work.  
Maximum penalty: Division 7 fine.
- (1a) An employee must take reasonable care to avoid adversely affecting the health or safety of any other person through an act or omission at work.  
Maximum penalty: Division 6 fine.
- (1b) An employee must so far as is reasonable (but without derogating from subsection (1) or (1a) or from any common law right)—
- (a) use equipment provided for health or safety purposes; and
  - (b) obey reasonable instruction that the employer may give in relation to health or safety at work; and
  - (c) comply with any policy that applies at the workplace published or approved by the Minister after seeking the advice of the Advisory Committee; and
  - (d) ensure that the employee is not, by the consumption of alcohol or a drug, in such a state as to endanger the employee's own safety at work or the safety of any other person at work.
- Maximum penalty: Division 6 fine.
- (2) In determining the standard of care applicable to a worker whose native language is not English and who is not reasonably fluent in English regard must be had to—
- (a) whether information relating to occupational health and safety has been reasonably available to the worker in a language and form that the worker might reasonably be expected to understand; and
  - (b) whether instruction or training of the worker (if any) has been carried out in a language and form that the worker might reasonably be expected to understand.

## **22—Duties of employers and self-employed persons**

- (1) An employer or a self-employed person must take reasonable care to protect his or her own health and safety at work.  
Maximum penalty: Division 7 fine.
- (2) An employer or self-employed person must ensure, so far as is reasonably practicable, that any other person (not being an employee employed or engaged by the employer or the self-employed person) is safe from injury and risks to health—
- (a) while the other person is at a workplace that is under the management and control of the employer or self-employed person; or
  - (b) while the other person is in a situation where he or she could be adversely affected through an act or omission occurring in connection with the work of the employer or self-employed person.
- Maximum penalty:
- (a) for a first offence—Division 2 fine;
  - (b) for a subsequent offence—Division 1 fine.

## 23—Duties of occupiers

The occupier of a workplace must ensure so far as is reasonably practicable—

- (a) that the workplace is maintained in a safe condition; and
- (b) that the means of access to and egress from the workplace are safe.

Maximum penalty:

- (a) for a first offence—Division 2 fine;
- (b) for a subsequent offence—Division 1 fine.

## 23A—Duties of designers and owners of buildings

- (1) A person who designs a building that is reasonably expected to comprise or include a workplace must—
  - (a) ensure so far as is reasonably practicable that the building is designed so that people who might work in, on or about the workplace are, in doing so, safe from injury and risks to health; and
  - (b) ensure that the building complies in all respects with prescribed requirements (if any) applicable to it.

Maximum penalty:

- (a) for a first offence—Division 2 fine;
- (b) for a subsequent offence—Division 1 fine.

- (2) The owner of a building that comprises or includes a workplace must—
  - (a) ensure so far as is reasonably practicable that the building, and any fixtures or fittings within the building that are under the control of the owner, are in a condition that allows people who might work in, on or about the workplace to be safe from injury and risks to health; and
  - (b) ensure that the building complies in all respects with prescribed requirements (if any) applicable to it.

Maximum penalty:

- (a) for a first offence—Division 2 fine;
- (b) for a subsequent offence—Division 1 fine.

- (3) In this section—

*building* includes a part of a building.

## 24—Duties of manufacturers etc

- (1) A person who designs, manufactures, imports or supplies any plant to which this subsection applies must—
  - (a) ensure so far as is reasonably practicable that the plant is designed and constructed so as to be safe—
    - (i) when properly used and maintained; and
    - (ii) when subjected to reasonably foreseeable forms of misuse; and

- (b) ensure so far as is reasonably practicable that the plant is designed and constructed so that people who might use, clean or maintain the plant are, in doing so, safe from injury and risks to health; and
- (c) take such steps to test or examine, or arrange for the testing or examination of, the plant as are reasonably necessary to ensure compliance with paragraphs (a) and (b); and
- (d) ensure that the plant complies in all respects with prescribed requirements (if any) applicable to it; and
- (e) ensure so far as is reasonably practicable that adequate information about any conditions necessary to ensure the safe installation, use and maintenance of the plant is supplied with the plant.

Maximum penalty:

- (a) for a first offence—Division 2 fine;
  - (b) for a subsequent offence—Division 1 fine.
- (2) A person who erects, installs or modifies any plant to which this subsection applies must ensure so far as is reasonably practicable that it will be safe—
- (a) when properly used and maintained; and
  - (b) when subjected to reasonably foreseeable forms of misuse.

Maximum penalty:

- (a) for a first offence—Division 2 fine;
  - (b) for a subsequent offence—Division 1 fine.
- (2aa) Subsections (1) and (2) apply to—
- (a) any plant that is to be used, or reasonably expected to be used, at a workplace; and
  - (b) without limiting the operation of paragraph (a), any plant to which this Act extends by virtue of Schedule 2.
- (2a) Without derogating from the operation of subsections (1) and (2), where any structure is to be erected in the course of any work—
- (a) the person who designs the structure must ensure so far as is reasonably practicable that the structure is designed so that the persons who are required to erect it are, in doing so, safe from injury and risks to health; and
  - (b) any person who manufactures any materials to be used for the purposes of the structure must ensure so far as is reasonably practicable that the materials are manufactured so that the persons who are required to erect the structure are, in using, handling or otherwise dealing with the materials, safe from injury and risks to health; and
  - (c) any person who imports or supplies any materials to be used for the purposes of the structure must ensure so far as is reasonably practicable that the materials are in such a state as to be safe to any person who must use, handle or otherwise deal with the materials; and

- (d) the person undertaking the erection of the structure must ensure so far as is reasonably practicable that the structure is safe during the course of its erection and subsequent use.

Maximum penalty:

- (a) for a first offence—Division 2 fine;
  - (b) for a subsequent offence—Division 1 fine.
- (3) A person who manufactures, imports or supplies any substance for use at a workplace must—
- (a) ensure so far as is reasonably practicable that the substance is in such a state as to be safe—
    - (i) when properly used, handled, processed, stored, transported or disposed of; and
    - (ii) when subjected to reasonably foreseeable forms of improper use, handling, processing, storage, transportation or disposal; and
  - (b) ensure so far as is reasonably practicable that the substance is in such a state that persons who might use, handle, process, store, transport or dispose of the substance are, in doing so, safe from injury and risks to health; and
  - (c) take such steps to test or examine, or arrange for the testing or examination of, the substance as are reasonably necessary to ensure compliance with paragraphs (a) and (b); and
  - (d) ensure that the substance complies in all respects with prescribed requirements (if any) applicable to it; and
  - (e) ensure so far as is reasonably practicable that adequate information about any conditions necessary to ensure its safe use, handling, processing, storage, transportation or disposal is provided in connection with the supply of the substance.

Maximum penalty:

- (a) for a first offence—Division 2 fine;
  - (b) for a subsequent offence—Division 1 fine.
- (4) In this section—  
*structure* includes a part of a structure.

## **24A—Duties of owners of plant**

- (1) The owner of any plant to which this section applies must—
- (a) ensure so far as is reasonably practicable that the plant is maintained in a safe condition; and
  - (b) ensure that the plant complies in all respects with prescribed requirements (if any) applicable to it; and
  - (c) ensure so far as is reasonably practicable that adequate information necessary to ensure the safe use of the plant is supplied to any user of the plant.

Maximum penalty:

- (a) for a first offence—Division 2 fine;

- (b) for a subsequent offence—Division 1 fine.
- (2) This section applies to—
  - (a) any plant that is used at a workplace; and
  - (b) without limiting the operation of paragraph (a), any plant to which this Act extends by virtue of Schedule 2.
- (3) In this section—

*owner* includes, in relation to any plant to which this Act extends by virtue of Schedule 2 which is installed in, or used in connection with, a building or structure on a permanent basis, the owner, lessee or occupier of the building or structure.

## **25—Duties applicable to all persons**

- (1) A person (not being an employer, employee or occupier of a workplace) must not—
  - (a) misuse or damage anything provided in the interests of health, safety or welfare; or
  - (b) place at risk the health or safety of any other person while that person is at work.
- (2) It is a defence to a charge of an offence against subsection (1) for the defendant to prove—
  - (a) that the act or omission alleged to give rise to the offence was neither intentional nor reckless; or
  - (b) that there is a reasonable excuse for that act or omission.



## Part 4—Health and safety representatives and committees

### Division 1—Preliminary

#### 26—Preliminary

For the purposes of this Part, *employee* does not include—

- (a) a self-employed contractor unless the work performed by the contractor is of a class prescribed for the purposes of this paragraph; or
- (b) a person employed in a managerial capacity unless a majority of employees at the particular workplace have resolved that it is reasonable to treat the person as an employee for the purposes of this Part; or
- (c) where the employer is a body corporate, an officer of the body corporate.

### Division 2—Appointment of health and safety representatives and committees

#### 26A—Interpretation

In this Division—

*interested employee*, in relation to the constitution or composition of a work group or health and safety committee, means an employee whose interests could be affected by the constitution or composition of that group or committee (or a change in such constitution or composition);

*recognised member* of a group means a member of the group who—

- (a) by agreement between the employer and—
  - (i) any interested employees; or
  - (ii) a person appointed by such employees; or
- (b) in default of agreement, by determination of the Industrial Commission,

is recognised as a member of the group for the purposes of the election of any health and safety representative to represent the group, and the other provisions of this Division relating to the office of health and safety representative.

#### 27—Health and safety representatives may represent groups

- (1) A group of employees may elect a health and safety representative to represent a work group for the purposes of this Act.
- (2) The constitution of a work group will be determined by agreement between the employer and—
  - (a) any interested employees; or
  - (b) a person appointed by such employees.
- (3) Where an employer is requested by an employee to act to constitute a work group for the purposes of this section, the employer must respond to the request within 14 days of its receipt.

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- (4) If an employee is a member of a registered association, that registered association must, at the request of the employee, be consulted in relation to any proposal relating to the formation of a work group that could affect the employee.
- (5) A work group must be constituted in a manner that takes into account—
  - (a) the need for a health and safety representative representing that group to be able to perform his or her functions effectively; and
  - (b) the need for the employer to be able to fulfil his or her responsibilities to a health and safety representative representing that group effectively.
- (6) Insofar as may be relevant to a particular case, and subject to any guidelines issued by the Advisory Committee, the following matters should be considered in relation to the constitution of a work group:
  - (a) the number of employees employed by the employer;
  - (b) the nature of each type of work performed by the employer's employees;
  - (c) the number and grouping of employees who perform the same or similar types of work;
  - (d) the areas or places where each type of work is performed;
  - (e) the extent to which any employee must move from place to place while at work;
  - (f) the times at which particular work is performed;
  - (g) the overtime or shift-work arrangements that apply in relation to the performance of work;
  - (h) the nature of particular risks involved in each type of work;
  - (i) any other relevant factor.
- (7) Where—
  - (a) an employer fails to respond to a request in accordance with subsection (3); or
  - (b) a dispute arises in relation to the constitution of a work group under this section,

an employee, the employer or, if any employee is a member of a registered association, that registered association if so requested by such an employee, may refer the matter to the Industrial Commission.
- (8) Where a matter is referred to the Industrial Commission under subsection (7), the Industrial Commission must attempt to resolve the matter by conciliation.
- (9) If a matter cannot be resolved within a reasonable time by conciliation under subsection (8), the Industrial Commission must refer the matter to the President of the Industrial Court for determination by a review committee.
- (10) The review committee may determine how a particular work group or groups are to be constituted and the decision of the review committee is binding on all parties.
- (11) The constitution of a work group may be varied at any time—
  - (a) by agreement between the employer and—
    - (i) any interested employees; or

- (ii) a person appointed by such employees; or
  - (b) in default of agreement, by a review committee.
- (12) The employer must keep a list of the work groups constituted under this section.
- (13) A copy of the list must be displayed by the employer in a prominent place at his or her principal place of business, or at any other place that is appropriate taking into account the constitution of the various work groups.

## **28—Election of health and safety representatives**

- (1) The election of health and safety representatives must be conducted in accordance with this section.
- (2) A person is eligible to be a candidate for election as a health and safety representative if the person is a recognised member of the work group that the health and safety representative is to represent.
- (3) The conduct of an election of a health and safety representative will be carried out by a person selected by agreement between at least one-half of the recognised members of the work group or, failing the selection of such a person within a reasonable time, on application to the Advisory Committee, by a person nominated by the Advisory Committee.
- (4) Every recognised member of the work group is entitled to vote at the election to appoint the health and safety representative to represent that group.
- (5) Subject to subsection (6), the election of a health and safety representative must be carried out in accordance with procedures prescribed by regulations made after the Minister has consulted with the Advisory Committee.
- (6) The election must be carried out by secret ballot if any recognised member of the work group so requests.
- (6a) The employer must be consulted about when the election is to be carried out before the arrangements for the election are finalised.
- (7) If there is only one candidate for election—
- (a) a ballot need not be held; and
  - (b) the candidate is taken to have been duly elected.
- (8) If a dispute arises in relation to the election of a health and safety representative under this section—
- (a) a person who is a recognised member of the work group; or
  - (b) if any such person is a member of a registered association and requests the registered association to act on his or her behalf—that registered association, may refer the dispute to the Industrial Commission.
- (9) Where a dispute is referred to the Industrial Commission under subsection (8), the Industrial Commission must attempt to resolve the dispute by conciliation.
- (10) If a dispute cannot be resolved within a reasonable time by conciliation under subsection (9), the Industrial Commission must refer the dispute to the President of the Industrial Court for determination by a review committee.

- (11) The review committee may determine the dispute and the decision of the review committee is binding on all the parties.
- (12) On being elected under this section, a health and safety representative must, in accordance with the regulations, provide the prescribed information to the employer and the Department.

### **29—Election of a deputy health and safety representative**

- (1) The recognised members of a work group may elect one of their number to be a deputy to the health and safety representative for that group.
- (2) A deputy may, in the absence of the health and safety representative, perform the functions of the health and safety representative under this Act.

### **30—Term of office of a health and safety representative**

- (1) Subject to this section, a health and safety representative will hold office for a term of three years.
- (2) A person ceases to be a health and safety representative for a work group if that person—
  - (a) completes a term of office and is not re-elected; or
  - (b) ceases to belong to the relevant work group; or
  - (c) resigns as a health and safety representative; or
  - (ca) is removed from office by a resolution of at least two-thirds of the recognised members of the group on the ground that they consider that the person has ceased to be a suitable person to act as their representative; or
  - (d) is disqualified by a review committee.
- (3) Where there is a substantial change in the circumstances surrounding the constitution of a work group and it is agreed at that time by at least one-half of the recognised members of the group that a fresh election should be held to elect a health and safety representative, the health and safety representative who was representing that group must resign and a fresh election must be held.
- (4) An application for the disqualification of a health and safety representative may be made to the President of the Industrial Court for determination by a review committee by—
  - (a) the employer; or
  - (b) a registered association of which any recognised member of the work group that the health and safety representative represents is a member; or
  - (c) a majority of the employees who at any particular time are the members of the work group that the health and safety representative represents.
- (5) The grounds upon which a health and safety representative may be disqualified are—
  - (a) that the health and safety representative has on repeated occasions neglected to carry out the functions of a health and safety representative under this Act; or
  - (b) that the health and safety representative has—

- (i) exercised or performed powers or functions under this Act for an improper purpose; or
  - (ii) disclosed information (being information acquired from the employer) for an improper purpose.
- (6) If a review committee is satisfied that a ground for disqualification exists, the review committee may, if it thinks fit, disqualify the health and safety representative for a specified period.
- (7) In determining what action (if any) should be taken under subsection (6), the review committee must take into account—
  - (a) the harm (if any) that has been caused by the health and safety representative;
  - (b) the past record of the health and safety representative in exercising or performing powers or functions under this Act;
  - (c) whether the actions of the health and safety representative were contrary to the public interest;
  - (d) any other relevant consideration.
- (8) For the purposes of this section, a reference to a health and safety representative includes a deputy to a health and safety representative.

### **31—Health and safety committees**

- (1) At the request of—
  - (a) a health and safety representative; or
  - (b) a prescribed number of employees; or
  - (c) a majority of the employees at any workplace,the employer must, within two months of the request, establish one or more health and safety committees.
- (1a) An employer must also establish one or more health and safety committees if required to do so by or under the regulations.
- (2) The composition of a health and safety committee must be determined by agreement between the employer, the health and safety representative and any interested employees.
- (3) If an employee is a member of a registered association, that registered association must, at the request of the employee, be consulted in relation to the composition of a health and safety committee under this section.
- (4) The membership of a committee should, so far as is reasonably practicable, represent a reasonable cross-section of the persons whose activities, work, or health, safety or welfare (whether as principal, manager, supervisor or employee) could be within the responsibilities of the committee subject however to the following qualifications:
  - (a) any relevant health and safety representative should be encouraged to be a member of the committee; and
  - (b) at least half of the members of the committee must be employees.

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- (5) If at any time agreement cannot be reached on any matter relating to the establishment or composition of a health and safety committee, an interested party may refer the matter to the Industrial Commission to resolve the disagreement.
- (6) Where a matter is referred to the Industrial Commission under subsection (5), the Industrial Commission must attempt to resolve the matter by conciliation.
- (7) If a matter cannot be resolved within a reasonable time by conciliation under subsection (6), the Industrial Commission must refer the matter to the President of the Industrial Court for determination by a review committee.
- (8) The review committee may determine any matter relating to the establishment or composition of a health and safety committee and its decision is binding on all the parties.
- (9) Subject to the regulations, the proceedings of a health and safety committee will be conducted in such manner as the committee may determine.
- (10) A health and safety committee must hold at least one meeting in every 3 months.
- (11) A meeting of a health and safety committee must be held—
  - (a) on the request of at least half of the members of the committee; or
  - (b) on the request of a health and safety representative; or
  - (c) on the request of the employer.
- (12) The composition of a health and safety committee may be varied at any time by agreement between the employer, any relevant health and safety representative, and any interested employees who are within the responsibility of the committee.
- (13) In addition to the other matters provided by this section, the regulations may make provision for—
  - (a) the term of office of a member of a health and safety committee;
  - (b) the disqualification of a person from acting, or continuing to act, as a member of a health and safety committee;
  - (c) the appointment of a person to a casual vacancy in the membership of a health and safety committee.
- (14) This section does not apply to a prescribed employer or an employer of a prescribed class (if any).

## **Division 2A—Training**

### **31A—Training of health and safety representatives, deputies and committee members**

- (1) A prescribed person is entitled to take such time off work as is authorised by the regulations for the purposes of taking part in a course of training relating to occupational health, safety or welfare approved by the Advisory Committee for the purposes of this section.
- (2) Subsection (1) is subject to the following qualifications:
  - (a) if—
    - (i) the employer employs 20 or less employees; and

- (ii) the employer is not an employer in respect of whom a supplementary levy has been imposed by WorkCover under Part 5 of the *Workers Rehabilitation and Compensation Act 1986*,  
a prescribed person may only take such time off work to take part in a course of training as the employer reasonably allows;
  - (b) a prescribed person must take reasonable steps to consult with the employer before taking time off work to take part in a course of training under this section.
- (3) If a dispute arises in relation to the entitlement of a prescribed person under this section, the prescribed person or the employer may refer the dispute to the Industrial Commission.
- (4) The Industrial Commission may determine the dispute and the decision of the Industrial Commission is binding on the prescribed person and the employer.
- (5) In this section—  
*prescribed person* means—
  - (a) a health and safety representative; and
  - (b) a deputy to a health and safety representative; and
  - (c) a member of a health and safety committee.

### **31B—Maintenance of pay and reimbursement of expenses**

- (1) A person who takes time off work for the purposes of any training under this Division—
  - (a) is entitled to take that time without the loss of any remuneration (payable by the employer) that the person would have received had he or she been at work for the relevant time; and
  - (b) is entitled to be reimbursed by the employer for any reasonable expenses reasonably incurred by the person with respect to—
    - (i) travelling; or
    - (ii) obtaining meals or accommodation; or
    - (iii) parking fees; or
    - (iv) other matters (if any) prescribed by the regulations,to the extent that these expenses are over and above, or additional to, expenses that the person would have incurred in any event had he or she been at work at the relevant time.
- (2) If a dispute arises in relation to the entitlement of a person under this section, the person or the employer may refer the dispute to the Industrial Commission.
- (3) The Industrial Commission may determine the dispute and the decision of the Industrial Commission is binding on the person and the employer.

### **31C—Guidelines**

The Advisory Committee may prepare and publish guidelines in relation to the operation of this Division.

## **Division 3—Functions of health and safety representatives and committees**

### **32—Functions of health and safety representatives**

- (1) A health and safety representative may, for the purpose of the health, safety and welfare of the employees in the work group that the health and safety representative represents—
  - (a) inspect the whole or any part of any relevant workplace—
    - (i) at any time after giving reasonable notice to the employer (which must state the name of any consultant who is to accompany the representative during the inspection and the purpose for which the consultant's advice is sought); or
    - (ii) immediately, in the event of an accident, dangerous occurrence or imminent danger or risk to the health or safety of any person;
  - (b) accompany an inspector during an inspection of any relevant workplace;
  - (c) investigate complaints relating to occupational health, safety or welfare made by employees in the work group;
  - (d) at the request of the employee, be present at any interview concerning occupational health, safety or welfare between an inspector and an employee;
  - (e) at the request of the employee, be present at any interview concerning occupational health, safety or welfare between the employer (or a representative of the employer) and an employee;
  - (f) make representations to the employer on any matter that relates to occupational health, safety or welfare at any relevant workplace.
- (2) In relation to the inspection of a workplace under subsection (1)(a), a health and safety representative may—
  - (a) be accompanied by such consultants as the representative thinks fit; and
  - (b) discuss any matter affecting health, safety or welfare with any employee at the workplace; and
  - (c) carry out any investigation that may appear appropriate.
- (3) Subsections (1) and (2) are subject to the following qualifications:
  - (a) a health and safety representative is only entitled to be accompanied on an inspection by a consultant approved by—
    - (i) the Advisory Committee; or
    - (ii) a health and safety committee that has responsibilities in relation to the work group that the health and safety representative represents; or
    - (iii) the employer; and

- (b) a health and safety representative should take reasonable steps to consult with the employer in relation to carrying out an investigation of any workplace and the outcome of any such investigation.
- (4) An employer is not liable for the cost of a consultant attending at a workplace pursuant to this section.
- (5) The powers and functions of a health and safety representative under this Act are limited to acting in relation to the work group that the health and safety representative represents.
- (6) No provision of this Act may be construed as imposing any duty on a health and safety representative in his or her capacity as a health and safety representative.
- (7) Where a health and safety representative exercises or performs a power or function under this Act—
  - (a) for an improper purpose intending to cause harm to the employer or a commercial or business undertaking of the employer; or
  - (b) for an improper purpose related to an industrial claim or dispute,the health and safety representative is guilty of an offence.  
Maximum penalty: Division 6 fine.

- (8) In this section—

*consultant* means a person who is, by reason of his or her experience or qualifications, suitably qualified to advise on issues relating to occupational health, safety or welfare.

### **33—Functions of health and safety committees**

- (1) The functions of a health and safety committee are—
  - (a) to facilitate co-operation between an employer and the employees of the employer in initiating, developing, carrying out and monitoring measures designed to ensure the health, safety and welfare at work of the employees; and
  - (b) to assist in the resolution of issues relating to occupational health, safety or welfare that arise at any relevant workplace; and
  - (c) to assist in the formulation, review and dissemination (in such languages as are appropriate) to employees of the occupational health, safety and welfare practices, procedures and policies that are to be followed at any relevant workplace; and
  - (d) to consult with the employer on any proposed changes to occupational health, safety or welfare practices, procedures or policies; and
  - (e) to keep under review—
    - (i) developments in the field of rehabilitation of employees who suffer work-related injuries; and
    - (ii) the employment of employees who suffer from any form of disability; and
  - (f) to assist—

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- (i) in the return to work of employees who have suffered work-related injuries; and
    - (ii) in the employment of employees who suffer from any form of disability; and
  - (g) such other functions as are prescribed or agreed upon by the employer and the health and safety committee.
- (2) A health and safety committee may establish such sub-committees as it thinks fit (which may, but need not consist of, or include, members of the committee) to provide advice or to assist it in the performance of its functions under this Act.
- (3) A health and safety committee may delegate any of its functions to a sub-committee established under subsection (2).
- (4) A delegation under subsection (3)—
- (a) may be made subject to such conditions as the health and safety committee thinks fit; and
  - (b) is revocable at will; and
  - (c) does not derogate from the power of the committee to act in any matter itself.

### **34—Responsibilities of employers**

- (1) An employer must—
- (a) consult any relevant health and safety representatives and health and safety committees on any proposed changes to any workplace, the plant used at any workplace, the substances used, handled, processed or stored at any workplace, the work to be conducted at any workplace or the procedures for carrying out work at any workplace, where those changes might affect the health, safety or welfare of employees at the workplace; and
  - (b) consult any relevant health and safety representatives and health and safety committees on the occupational health, safety and welfare practices, procedures and policies that are to be followed at any workplace; and
  - (c) consult any relevant health and safety representatives and health and safety committees on any proposed changes to occupational health, safety and welfare practices, procedures or policies; and
  - (d) consult any relevant health and safety representatives on any proposed application to the designated person for the modification of the requirements of any regulation; and
  - (e) at the request of the employee, permit a health and safety representative to be present at any interview concerning occupational health, safety or welfare between the employer (or a representative of the employer) and an employee who is a member of the work group that the health and safety representative represents; and
  - (f) permit any relevant health and safety representative to accompany an inspector during an inspection of any workplace; and
  - (g) permit a health and safety representative to have access to such information as the employer possesses or can reasonably obtain—

- (i) relating to risks that arise or may arise at any workplace where employees who are members of the work group that the health and safety representative represents work, out of work conducted at any workplace or out of plant or substances used at any workplace; or
- (ii) concerning the health and safety of the employees of the employer (but personal information regarding the health of an employee must not be divulged under this subparagraph without the consent of the employee),

and, when requested to do so, supply a copy of that information to the health and safety representative; and

- (h) immediately notify a health and safety representative of the occurrence of an accident, dangerous occurrence, imminent danger or risk or hazardous situation that affects or may affect any employee who is a member of the work group that the health and safety representative represents; and
  - (i) notify a health and safety representative of the occurrence of any work-related injury to an employee who is a member of the work group that the health and safety representative represents; and
  - (j) provide such other facilities and assistance to health and safety representatives as are necessary or prescribed to enable them to perform their functions under this Act.
- (2) An employer is not required to give to a health and safety representative under subsection (1)(g)—
- (a) information that is privileged on the ground of legal professional privilege; or
  - (b) information that is relevant to proceedings that have been commenced under this Act.
- (3) A health and safety representative is entitled to take such time off work as is reasonably necessary for the purposes of performing the functions of a health and safety representative under this Act.
- (4) A health and safety representative who takes time off work under subsection (3)—
- (a) is entitled to take that time without the loss of any remuneration (payable by the employer) that the health and safety representative would have received had he or she been at work for the relevant time; and
  - (b) is entitled to be reimbursed by the employer for any reasonable expenses reasonably incurred by the health and safety representative with respect to—
    - (i) travelling; or
    - (ii) obtaining meals or accommodation; or
    - (iii) parking fees; or
    - (iv) other matters (if any) prescribed by the regulations,to the extent that these expenses are over and above, or additional to, expenses that the health and safety representative would have incurred in any event had he or she been at work at the relevant time.

## **Occupational Health, Safety and Welfare Act 1986—15.8.2005**

### Part 4—Health and safety representatives and committees

#### Division 3—Functions of health and safety representatives and committees

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- (5) A health and safety representative must take reasonable steps to obtain the agreement of the employer before incurring any expenses that he or she intends to claim under subsection (4)(b) (and that agreement must not be unreasonably withheld).
- (5a) The Advisory Committee may prepare and publish guidelines in relation to the operation of subsections (3), (4) and (5).
- (6) If a dispute arises in relation to the entitlement of a health and safety representative under subsection (3) or (4), the health and safety representative or the employer may refer the dispute to the Industrial Commission.
- (7) The Industrial Commission may determine the dispute and the decision of the Commission is binding on the health and safety representative and the employer.

## **Division 4—Resolution of health, safety or welfare issues**

### **35—Default notices**

- (1) Where a health and safety representative is of the opinion that a person—
  - (a) is contravening a provision of this Act; or
  - (b) has contravened a provision of this Act in circumstances that make it likely that the contravention will be repeated,the health and safety representative must consult with the employer in relation to the matter.
- (2) If the health and safety representative and the employer are unable within a reasonable time to resolve a particular matter pursuant to subsection (1), the matter must, if there is a health and safety committee that has responsibility in relation to the matter, be referred to that committee or, if there is no such committee, the matter may be referred to an inspector.
- (3) Despite subsections (1) and (2), if after taking reasonable steps to stop by consultation a contravention of this Act or prevent a repeated contravention of this Act the health and safety representative is of the opinion that the matter has not been satisfactorily resolved, the health and safety representative may issue a default notice requiring the person to whom the notice is addressed to remedy the contravention.
- (4) A health and safety representative must not issue a default notice in relation to any matter that is the subject of an improvement notice or a prohibition notice.  
Maximum penalty: Division 7 fine.
- (5) Where a health and safety representative issues a default notice, the notice must—
  - (a) state that the health and safety representative is of the opinion that a person—
    - (i) is contravening a provision of this Act; or
    - (ii) has contravened a provision of this Act in circumstances that make it likely that the contravention will be repeated; and
  - (b) state the grounds of the health and safety representative's opinion.
- (6) A health and safety representative may specify in a default notice a day by which the matters referred to in the notice must be remedied.

- (7) Where a default notice is issued to an employee, the employee must, as soon as is reasonably practicable after receiving it, give the notice, or a copy of the notice, to his or her employer.

Maximum penalty: Division 6 fine.

- (8) Subject to subsection (11), a person to whom a default notice is addressed or, where that person is an employee, that person's employer, must take all reasonable steps to remedy—

- (a) if a day has been specified under subsection (6)—by that day;
- (b) if a day has not been specified under subsection (6)—within a reasonable time,

the matters referred to in the notice.

Maximum penalty: Division 3 fine.

- (9) If—

- (a) a person to whom a default notice is addressed or, where that person is an employee, that person's employer, considers that a default notice need not have been issued or is, for some other reason, inappropriate; or
- (b) a health and safety representative—
  - (i) considers that there has been unreasonable delay in taking action under subsection (8); or
  - (ii) is dissatisfied with the action taken under that subsection in response to the notice,

an inspector may be requested to attend at the workplace.

- (10) A request under subsection (9)(a) must be made by a person within 14 days of the receipt of the default notice (or a copy of the notice) by the person.
- (11) Where an inspector has been requested to attend at a workplace under subsection (9)(a), the operation of the default notice is, pending the attendance of the inspector, suspended.
- (12) Where a default notice is issued, the person to whom notice is addressed must, on receipt of the notice (or a copy of the notice)—
- (a) bring the notice to the attention of any person whose work is affected by the notice; and
  - (b) display the notice or a copy of the notice in a prominent place at or near any workplace that is affected by the notice; and
  - (c) keep a copy of the notice for such period as may be prescribed.

Maximum penalty: Division 6 fine.

- (13) A person must not remove a notice or a copy of a notice displayed pursuant to subsection (12) while the notice is in force.

Maximum penalty: Division 6 fine.

- (14) A default notice may be cancelled—

- (a) at any time, by the health and safety representative who issued the notice; or

- (b) if the health and safety representative is absent from the workplace and cannot reasonably be contacted, by a health and safety committee that has responsibilities in relation to the matter.

### **36—Action where the health and safety of a worker is threatened**

- (1) Where a health and safety representative is of the opinion that there is an immediate threat to the health or safety of an employee who is a member of the work group that the health and safety representative represents, the health and safety representative must consult with the employer in relation to the matter.
- (2) If the health and safety representative and the employer are unable within a reasonable time to resolve a particular matter pursuant to subsection (1), the matter must, if there is a health and safety committee that has responsibility in relation to the matter, be referred to that committee or, if there is no such committee, the matter must be referred to an inspector.
- (3) Despite subsections (1) and (2), if the health and safety representative is of the opinion that given the nature of the threat and degree of risk work should immediately cease, the health and safety representative may direct that work cease until adequate measures are taken to protect the health and safety of an employee.
- (4) Where a health and safety representative gives a direction that work cease—
  - (a) if the direction is given without consultation with the employer or before the matter has been considered by a health and safety committee (if any) that has responsibility in relation to the matter, the health and safety representative must, as soon as practicable after giving the direction, consult with the employer and, if it is necessary or appropriate, with the committee; and
  - (b) the employer or the health and safety representative may request an inspector to attend at the workplace.

### **37—Attendance by inspector**

- (1) Where a matter is referred to an inspector under this Division, the inspector must attend at the workplace as soon as possible but in any event—
  - (a) if a direction has been given that work cease—
    - (i) where the workplace is within the metropolitan area—within 1 business day;
    - (ii) where the workplace is outside the metropolitan area—within 2 business days; or
  - (b) in any other case—within 7 business days.
- (2) An inspector—
  - (a) must attempt to resolve any occupational health, safety or welfare matter that remains unresolved; and
  - (b) if a default notice has been issued, may—
    - (i) confirm the notice; or
    - (ii) confirm the notice with such modifications as the inspector thinks fit; or

- (iii) cancel the notice; and
  - (c) if the inspector thinks fit, may issue a prohibition notice or an improvement notice; and
  - (d) may make such recommendations or take such other action as appear appropriate.
- (3) Where a work cessation direction was given and an inspector determines that there was an immediate threat to health or safety justifying a cessation of work or that the health and safety representative reasonably believed that such a threat existed, any employee employed in the work who is remunerated by wages or salary is entitled to be paid for the period of cessation so as not to suffer a loss of income.
- (4) Where an inspector confirms a default notice or confirms such a notice with modifications, the inspector must order the person to whom the notice was addressed to comply with the notice within a period specified by the inspector.
- (5) A person who contravenes or fails to comply with a default notice that is confirmed by an inspector within the period specified by the inspector is guilty of an offence.  
Maximum penalty: Division 3 fine.
- (6) An employer, employee or health and safety representative who is dissatisfied with the actions of an inspector under this section may apply to the President of the Industrial Court for the determination of the matter by a review committee.
- (7) At the conclusion of a review under this section, a review committee may give such directions as it thinks fit.
- (8) A person must not contravene or fail to comply with a direction of a review committee within any period specified by the review committee.

### **37A—Division not to derogate from other referrals to an inspector**

Nothing in this Division limits or derogates from the ability of a health and safety representative, employee or other person to refer at any time any matter concerning occupational health, safety or welfare to an inspector or other person involved in the administration or enforcement of this Act.



## Part 5—Inspections

### 38—Powers of entry and inspection

- (1) For the purposes of this Act, an inspector or a person authorised by the Director to exercise the powers conferred by this section may—
  - (a) enter at any time any workplace, or any other place where any plant to which this Act extends by virtue of Schedule 2 is situated;
  - (b) inspect the place, anything at the place and work in progress at the place;
  - (c) require a person who has custody or control of books, documents or records to produce such books, documents or records;
  - (d) examine, copy and take extracts from any books, documents or records, or require an employer to provide a copy of any books, documents or records;
  - (e) take photographs, films or video or audio recordings;
  - (f) take measurements, make notes and records and carry out tests;
  - (g) require any person to answer, to the best of that person's knowledge, information and belief, any question relating to the health, safety or welfare of persons at any workplace or to any other matter to which this Act applies (whether the question is put directly or through an interpreter);
  - (h) require an employer to produce a copy of any statement or record that is required to be prepared or kept under this Act.
- (1a) Subsection (1)(a) is subject to the following qualifications:
  - (a) a person cannot enter a workplace where a self-employed person works alone except where he or she has a reasonable belief that there is a risk to the health or safety of a person other than the self-employed person; and
  - (b) a person cannot enter a place which is not a workplace (being a place where any plant to which this Act extends by virtue of Schedule 2 is situated) except where he or she is doing so at a reasonable time.
- (2) Where—
  - (a) a person whose native language is not English is suspected of having breached this Act; and
  - (b) the person is being interviewed by an inspector in relation to that suspected breach; and
  - (c) the person is not reasonably fluent in English,the person is entitled to be assisted by an interpreter during the interview.
- (3) A person is not required to provide under subsection (1)—
  - (a) information that is privileged on the ground of legal professional privilege; or
  - (b) information that is relevant to proceedings that have been commenced under this Act.

- (4) In addition to the powers contained in subsection (1), an inspector may, if the inspector suspects on reasonable grounds that an offence against this Act has been committed, seize and retain anything that affords evidence of that offence, or in relation to which the offence is suspected of having been committed.
- (5) An inspector who has seized anything under subsection (4) must, on request, provide a receipt for the thing seized.
- (6) In the exercise of powers under this section, a person may be accompanied or assisted by such persons, authorised by the Director, as may be necessary or desirable in the circumstances.
- (7) The occupier of a place that is the subject of an inspection under this section and any employer at that place must provide such assistance as may be necessary to facilitate the exercise of the powers conferred by this section.
- (8) A person must not—
  - (a) hinder or obstruct an inspector or other authorised person in the exercise of a power conferred by this section; or
  - (b) refuse or fail, without lawful excuse, to comply with a requirement under this section.

Maximum penalty: Division 5 fine.

- (9) Where the occupier of a workplace becomes aware of the attendance of an inspector at the workplace, the occupier must notify the health and safety representatives who are present at the workplace.
- (10) Where an inspector carries out an inspection of a workplace under this section, the inspector—
  - (a) must take reasonable steps to consult with the occupier of the workplace (or, if the occupier is not present, the person who at that time is apparently in control of the workplace), any employer of employees at the workplace and any health and safety representative who represents those employees on—
    - (i) any occupational health, safety or welfare issue that arises from the inspection; and
    - (ii) the action (if any) that the inspector considers should be taken as a result of the inspection; and
  - (b) must make available to the occupier, any employer and any health and safety representative copies of any written report (or any part of a written report) made by the inspector in relation to the inspection, insofar as that report relates to—
    - (i) factual information obtained during the inspection; or
    - (ii) the action (if any) that the inspector has taken or proposes to take as a result of the inspection,(and, when requested to do so, must supply a copy of that report or that part of the report to the occupier, employer and health and safety representatives); and
  - (c) must take reasonable steps—

- (i) to relate to a health and safety representative the contents of any oral report made by the inspector to the occupier or an employer at the workplace and the details of any consultation that has occurred in the absence of the health and safety representative (insofar as that report or consultation relates to the health, safety or welfare of employees in the work group that the health and safety representative represents); and
  - (ii) to relate to an employer the contents of any oral report made by the inspector to a health and safety representative at the workplace and the details of any consultation that has occurred in the absence of the employer.
- (11) An inspector who has a pecuniary or other personal interest in any business carried on at a workplace must not inspect that workplace unless and until the inspector has disclosed that interest to the Director and has obtained the Director's permission to carry out the inspection.

Maximum penalty: Division 6 fine.



## Part 6—Improvement notices and prohibition notices

### 39—Improvement notices

- (1) Where an inspector is of the opinion that a person—
  - (a) is contravening a provision of this Act; or
  - (b) has contravened a provision of this Act in circumstances that make it likely that the contravention will be repeated,the inspector may issue an improvement notice requiring the person to whom the notice is addressed to remedy the matters occasioning the contravention or likely contravention.
- (2) An improvement notice must—
  - (a) state that the inspector is of the opinion that a person—
    - (i) is contravening a provision of this Act; or
    - (ii) has contravened a provision of this Act in circumstances that make it likely that the contravention will be repeated; and
  - (b) state the grounds of the inspector's opinion; and
  - (c) specify the provision of this Act in respect of which that opinion is held; and
  - (d) make provision for a statement (a *statement of compliance*) that is to be completed by the person required to comply with the notice when the matters to which the notice relates have been remedied.
- (3) An inspector may—
  - (a) include in an improvement notice directions as to the measures to be taken to remedy the contravention, or to avoid further contravention, of the Act;
  - (b) specify in an improvement notice a day by which the matters referred to in the notice must be remedied.
- (4) Subject to this Act, a person who contravenes or fails to comply with an improvement notice is guilty of an offence.  
Maximum penalty: Division 3 fine.  
Expiation fee: \$315.
- (5) The person required to comply with an improvement notice must, within 5 business days after the matters to which the notice relates have been remedied in accordance with the requirements of the notice, complete and return to the Department the relevant statement of compliance.  
Maximum penalty: Division 7 fine.  
Expiation fee: \$315.
- (6) An expiation notice cannot be issued under subsection (5) after the third anniversary of the commencement of that subsection.

#### **40—Prohibition notices**

- (1) Where an inspector is of the opinion—
  - (a) that there is an immediate risk—
    - (i) to the health or safety of a person at work; or
    - (ii) to the health or safety of any person in connection with the performance of any work, or from any plant to which this Act extends by virtue of Schedule 2; or
  - (b) that there could be an immediate risk—
    - (i) to the health or safety of a person at work; or
    - (ii) to the health or safety of any person in connection with the performance of any work, or from any plant to which this Act extends by virtue of Schedule 2,

if particular action were to be taken or a particular situation were to occur,

an inspector may issue to the person apparently in control of the activity or situation from which the risk arises or could arise (as the case may be) a prohibition notice prohibiting the carrying on of an activity or any other relevant action until the inspector is satisfied that adequate measures have been taken or are in place to avert, assess, eliminate or minimise any risk.
- (2) A prohibition notice must—
  - (a) identify the activity or situation from which the risk arises or would arise; and
  - (b) state the grounds of the inspector's opinion on which the notice is based.
- (3) An inspector may include in a prohibition notice directions as to the measures to be taken to avert, assess, eliminate or minimise the risk to which the notice relates.
- (4) Subject to this Act a person who contravenes or fails to comply with a prohibition notice is guilty of an offence.

Maximum penalty: Division 2 fine plus \$20 000 for each day that the contravention or failure continues.

#### **41—Notices to be displayed**

- (1) Where an improvement notice or prohibition notice is issued, to an employee, the employee must, as soon as is reasonably practicable after receiving it, give the notice, or a copy of the notice, to his or her employer.

Maximum penalty: Division 6 fine.
- (2) Where an improvement notice or a prohibition notice is issued, the person to whom the notice is addressed must, on receipt of the notice (or a copy of the notice)—
  - (a) supply a copy of the notice to any health and safety representative who represents any employees whose work is affected by the notice; and
  - (b) bring the notice to the attention of any person whose work is affected by the notice; and

- (c) display the notice or a copy of the notice in a prominent place at or near any workplace or plant that is affected by the notice.

Maximum penalty: Division 6 fine.

- (3) A person must not remove a notice or the copy of a notice displayed pursuant to subsection (2) while the notice is in force.

Maximum penalty: Division 6 fine.

#### **42—Review of notices**

- (1) Any of the following persons, namely—
  - (a) an employer affected by an improvement notice or prohibition notice; or
  - (b) a person in relation to whose work or plant an improvement notice or a prohibition notice applies; or
  - (c) a health and safety representative who represents any employee whose work is affected by an improvement notice or a prohibition notice,

may apply to the President of the Industrial Court to have the notice or the actions of an inspector reviewed by a review committee.

- (2) An application under subsection (1)(a) or (b) must be made by a person within 14 days of the receipt of the notice (or a copy of the notice) by the person.
- (3) Pending the determination of an application for review under this section the operation of the notice to which the application relates will—
  - (a) in the case of an improvement notice—be suspended;
  - (b) in the case of a prohibition notice—continue.
- (4) A review committee may if it thinks fit make an interim order suspending the operation of a prohibition notice until the matter is resolved.
- (5) An order under subsection (4) must be made subject to such conditions as may be necessary to protect the health and safety of any person.
- (6) Where a prohibition notice has been issued, the proceedings on a review under this section must be carried out as a matter of urgency.

#### **43—Powers of committee on review**

- (1) At the conclusion of a review under this Part, a review committee may—
  - (a) confirm any notice to which the review relates; or
  - (b) confirm a notice with such modifications as it thinks fit; or
  - (c) cancel a notice; or
  - (d) issue a notice or issue a different notice in substitution for the notice.
- (2) Where a review committee confirms an improvement notice the operation of which has been suspended or confirms such a notice with modifications, the review committee must order the person to whom the notice was addressed to comply with the notice within a period specified by the committee.

- (3) A person who contravenes or fails to comply with a notice that is confirmed or issued by a review committee within the period specified by the committee is guilty of an offence.

Maximum penalty: Division 2 fine.

#### **44—Worker's entitlement to pay while notice is in force**

Where work is suspended in consequence of an improvement notice or a prohibition notice, an employee employed in the work who is remunerated by wages or salary is entitled to be paid for the period of suspension so as not to suffer a loss of income.

#### **45—Action on default**

- (1) Subject to subsection (2), where a person is required by an improvement notice or prohibition notice to take any specified measures and the person fails to comply with the notice, the inspector who issued the notice may have those measures carried out and, for that purpose, the inspector or any person authorised by the inspector may, after giving reasonable notice to the person required to take the measures, enter and take possession of any workplace, or any other place where any plant to which this Act extends by virtue of Schedule 2 is situated (taking such measures as are reasonably necessary for the purpose) and do, or cause to be done, such things as full and proper compliance with the notice may require.
- (2) If a person who has been required by an improvement notice or prohibition notice to take specified measures stops using plant that is subject to the notice and satisfies an inspector that the plant will not be used again until the notice is complied with, action may not be taken under subsection (1) in relation to that plant (unless the plant is used again before the notice is complied with).
- (3) If a person referred to in subsection (2) uses plant that is not to be used again until an improvement notice or prohibition notice is complied with before that notice is complied with, the person is guilty of an offence.
- Maximum penalty: Division 3 fine.
- (4) The Crown may recover the costs and expenses reasonably incurred in an inspector or other authorised person exercising the powers under subsection (1) from the person who failed to comply with the notice, as a debt in a court of competent jurisdiction.

## **Part 7—Review committees**

### **46—Review committees**

There will be such review committees as are necessary for the purposes of this Act.

### **47—Constitution of review committees**

- (1) A review committee will be constituted in relation to particular proceedings by the President of the Industrial Court.
- (2) The President of the Industrial Court will constitute a review committee by appointing one member from each of the panels constituted under subsection (3) to the committee.
- (3) For the purpose of constituting review committees there will be—
  - (a) a panel of Judges of the Industrial Court and Industrial Magistrates appointed by the President; and
  - (b) a panel of members nominated by the Minister after taking into account the recommendations of employer associations; and
  - (c) a panel of members nominated by the Minister after taking into account the recommendations of the United Trades and Labor Council.
- (4) A person ceases to be a member of a panel if that person—
  - (a) resigns by written notice addressed to the President of the Industrial Court; or
  - (b) is removed from the panel—
    - (i) in the case of a Judge or Industrial Magistrate—by the President; or
    - (ii) in any other case—by the Minister,on the ground of misconduct, neglect of duty, incompetence or mental or physical incapacity to carry out satisfactorily the duties of office; or
  - (c) has completed a period of 3 years since being appointed to the panel, or last appointed to the panel, and is not reappointed to the panel.
- (5) A member of a panel is entitled to such fees, allowances and expenses as the Governor may approve.
- (6) Despite subsection (2), the President of the Industrial Court may, in a special case, constitute a review committee solely of a Judge of the Industrial Court or an Industrial Magistrate (and this Part will then apply with respect to the relevant proceedings with such modifications or variations as may be necessary or appropriate, or as may be prescribed).

### **48—Procedures of the committee**

- (1) The member of a review committee appointed from the panel of Judges and Industrial Magistrates will preside at any proceedings of the review committee.
- (2) A decision in which any two members of a review committee concur is a decision of the committee.

- (3) A review committee—
- (a) must act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms; and
  - (b) is not bound by any rules of evidence, but may inform itself on any matter in such manner as it thinks fit.
- (4) A review committee must give reasonable notice to the parties to proceedings before it of the time and place of those proceedings and afford the parties a reasonable opportunity to call or give evidence, to examine or cross-examine witnesses and to make submissions.
- (5) In the exercise of its powers and functions, a review committee may—
- (a) by summons signed by the presiding member of the committee, require the attendance before the committee of any person; and
  - (b) by summons signed by the presiding member of the review committee, require the production of any document, object or material; and
  - (c) require any person appearing before the review committee to answer any relevant questions put by the committee, any member of the committee or by any person appearing before the committee.
- (6) Where—
- (a) the native language of a person who is to give oral evidence in any proceedings before a review committee is not English; and
  - (b) the witness is not reasonably fluent in English,
- the person is entitled to give that evidence through an interpreter.
- (7) A person may present written evidence to a review committee in a language other than English if that written evidence has annexed to it—
- (a) a translation of the evidence into English; and
  - (b) an affidavit by the translator to the effect that the translation accurately reproduces in English the contents of the original evidence.
- (8) If a person—
- (a) who has been served with a summons to attend before a review committee fails without reasonable excuse to attend in obedience to the summons; or
  - (b) who has been served with a summons to produce any document, object or material, fails without reasonable excuse to comply with the summons; or
  - (c) misbehaves before a review committee, wilfully insults a review committee or any member of a review committee, or interrupts the proceedings of a review committee; or
  - (d) refuses to answer any relevant question when required to do so by a review committee,

that person is guilty of an offence.

Maximum penalty: Division 6 fine.

- (9) A person is not obliged to answer a question under this section if the answer would tend to incriminate that person of an offence, or to produce a document, object or material if it or its contents would tend to incriminate that person of an offence.
- (10) A review committee may—
  - (a) refer any technical matter to an expert;
  - (b) accept the evidence or report of an expert.
- (11) A person is entitled to appear personally, or by representative, in proceedings before a review committee.
- (12) A person who appears as a witness in proceedings before a review committee is, subject to any contrary direction by the review committee, entitled to reimbursement of expenses in accordance with the regulations.
- (13) A review committee should hear and determine any matter referred to it as expeditiously as possible.
- (14) Except as provided by this section, the proceedings of a review committee may be conducted in such manner as the review committee determines.

#### **49—Appeals**

- (1) A party to proceedings before a review committee may appeal to the Supreme Court against a decision of the committee in those proceedings.
- (2) For the purposes of an appeal under this section, the Supreme Court may be constituted of a single Judge.
- (3) An appeal under this section may be on a question of law or a question of fact.
- (4) An appeal on a question of fact may only occur with the permission of the Supreme Court (which should only be granted where special reasons are shown).
- (5) An appeal under this section must be instituted within 21 days of the decision appealed against unless the Supreme Court, in its discretion, allows a longer time for the institution of an appeal.
- (6) Pending the determination of an appeal in a case where a prohibition notice has been issued, the operation of the prohibition notice will, subject to an order made under subsection (7), continue.
- (7) The Supreme Court may if it thinks fit make an interim order suspending the operation of a prohibition notice pending the determination of an appeal.
- (8) An order under subsection (7) must be made subject to such conditions as may be necessary to protect the health and safety of the employees to whom the prohibition notice relates.

#### **50—Immunity of members**

No personal liability attaches to a member of a review committee for an act or omission by the member in good faith in the exercise or discharge or purported exercise or discharge of a power or function of the member under this Act.



## **Part 8—Miscellaneous**

### **51—Immunity of inspectors and officers**

- (1) No personal liability attaches to an inspector or any other officer engaged in the administration or enforcement of this Act for an act or omission by the inspector or officer in good faith in the exercise or discharge, or purported exercise or discharge, of an official power or function under this Act.
- (2) A liability that would, but for subsection (1), lie against an inspector or officer lies against the Crown.

### **52—Inspector to produce certificate of authority**

Where an inspector exercises a power or performs a function under this Act, the inspector must, at the request of a person affected by the exercise of the power or the performance of the function, produce a certificate of identification, in a form approved by the Minister, for inspection by that person.

### **53—Delegation**

- (1) The Minister, the Director or the Advisory Committee may, by instrument in writing, delegate a power or function under this Act.
- (2) A delegation under this section—
  - (a) may be made subject to such conditions as the delegator thinks fit; and
  - (b) is revocable at will; and
  - (c) does not derogate from the power of the delegator to act in any matter.

### **54—Power to require information**

- (1) The Minister or a person authorised by the Minister may, by notice in writing, require a person to furnish information relating to occupational health, safety or welfare that is reasonably required for the administration, operation or enforcement of this Act.
- (1a) The Advisory Committee may, by notice in writing, require the Department to furnish information necessary for the performance of the Advisory Committee's functions.
- (2) A person is not required to provide under subsection (1)—
  - (a) information that is privileged on the ground of legal professional privilege; or
  - (b) information that is relevant to proceedings that have been commenced under this Act; or
  - (c) information that would tend to incriminate the person who has the information of an offence; or
  - (d) personal information regarding the health of a person who does not consent to the disclosure of the information.

### 54A—Provision of information by WorkCover

- (1) WorkCover will, to the extent required by a scheme established by the Minister after consultation with WorkCover, furnish to the Advisory Committee and the Department, in accordance with the terms of the scheme, any of the following information obtained by WorkCover in the performance or exercise of its functions or powers under a related Act:
  - (a) information about any work-related injury, or about any specified class of work-related injury, reported to or investigated by WorkCover;
  - (b) the steps being taken by any employer, or any employer of a specified class, to protect employees from injury or risks to health, safety or welfare, or to assist in the rehabilitation of employees who have suffered injuries in connection with their work;
  - (c) information relating to the cost or frequency of claims involving a particular employer, or class of employers, so as to allow comparisons between employers in a particular industry, or part of an industry;
  - (d) the outcome of any investigation, inquiry or other action undertaken by WorkCover;
  - (e) other information of a kind prescribed by the regulations.
- (2) To avoid doubt, section 112 of the *Workers Rehabilitation and Compensation Act 1986* does not apply in relation to the disclosure of information under subsection (1).
- (3) In this section—

*related Act* means—

  - (a) the *WorkCover Corporation Act 1994*; and
  - (b) the *Workers Rehabilitation and Compensation Act 1986*.

### 55—Confidentiality

- (1) A person (including a health and safety representative, a member of a health and safety committee or a person acting as a consultant) must not disclose information (except as permitted by subsection (1a)) if—
  - (a) the person obtained the information in the course of carrying out functions in, or related to, the administration, operation or enforcement of this Act; and
  - (b) the information is—
    - (i) about commercial or trading operations; or
    - (ii) about the physical or mental condition, or the personal circumstances or affairs, of an employee or other person; or
    - (iii) information provided in a return or in response to a request for information under this Act.

Maximum penalty: Division 6 fine.

- (1a) The disclosure of information is permitted if it is—
  - (a) a disclosure in the course of official duties; or

- (b) a disclosure of statistical information; or
  - (c) a disclosure made with the consent of the person to whom the information relates, or who furnished the information; or
  - (d) a disclosure required by a court or tribunal constituted by law; or
  - (e) a disclosure to the Advisory Committee, WorkCover, or to an administrative unit in the Public Service of the State, made under the authorisation of the Minister; or
  - (f) a disclosure authorised by the regulations.
- (1b) A regulation made for the purposes of subsection (1a)(f) cannot take effect unless it has been laid before both Houses of Parliament and—
- (a) no motion for disallowance is moved within the time for such a motion; or
  - (b) every motion for disallowance of the regulation has been defeated or withdrawn, or has lapsed.
- (1c) A person must, in making a disclosure under subsection (1a), insofar as is reasonably practicable, take steps to prevent or minimise any adverse commercial or industrial impact on the relevant employer.
- (2) An inspector must not intentionally disclose to an employer the name of a person who has made a complaint to the inspector in relation to occupational health, safety or welfare unless—
- (a) the disclosure is made with the consent of the complainant; or
  - (b) the disclosure is required by a court or tribunal constituted by law.

Maximum penalty: Division 6 fine.

### **55A—Inappropriate behaviour towards an employee**

- (1) For the purposes of this section, bullying is behaviour—
- (a) that is directed towards an employee or a group of employees, that is repeated and systematic, and that a reasonable person, having regard to all the circumstances, would expect to victimise, humiliate, undermine or threaten the employee or employees to whom the behaviour is directed; and
  - (b) that creates a risk to health or safety.
- (2) However, bullying does not include—
- (a) reasonable action taken in a reasonable manner by an employer to transfer, demote, discipline, counsel, retrench or dismiss an employee; or
  - (b) a decision by an employer, based on reasonable grounds, not to award or provide a promotion, transfer, or benefit in connection with an employee's employment; or
  - (c) reasonable administrative action taken in a reasonable manner by an employer in connection with an employee's employment; or
  - (d) reasonable action taken in a reasonable manner under an Act affecting an employee.

- (3) If—
- (a) an inspector receives a complaint from an employee that he or she is being bullied or abused at work; and
  - (b) the inspector, after an investigation of the matter, has reason to believe that the matter is capable of resolution under this section,
- the inspector may—
- (c) take reasonable steps to resolve the matter between the parties himself or herself; and
  - (d) if the matter remains unresolved after taking the steps required under paragraph (c), after consultation with the parties, refer the matter to the Industrial Commission for conciliation or mediation.
- (4) A reference under subsection (3) will be made by written instrument that complies with any prescribed requirements.
- (5) The inspector must ensure that the parties are furnished with a copy of any reference under subsection (3).
- (6) If a matter is referred to the Industrial Commission under subsection (3), the Industrial Commission must attempt to resolve the matter by—
- (a) conciliation; or
  - (b) mediation,
- as the Industrial Commission thinks fit.
- (7) For the purposes of this section—
- (a) conciliation is a process where the parties meet with the conciliator with a view to the conciliator identifying the issues and resolving the matter by making recommendations if the matter is not settled by agreement; and
  - (b) mediation is a process where the mediator seeks to resolve the matter by facilitating an amicable agreement between the parties.
- (8) The Industrial Commission must seek to commence any conciliation or mediation within 5 business days after the matter is referred to the Industrial Commission under this section.
- (9) For the purposes of any conciliation or mediation, the Industrial Commission may (subject to subsection (10))—
- (a) interview the parties separately or together; and
  - (b) inform itself in any other way as it thinks fit.
- (10) The person undertaking a conciliation or mediation must—
- (a) at the request of a party, attend at a workplace (on at least 1 occasion) for the purposes of the conciliation or mediation;
  - (b) deal with the matter with a minimum of formality.
- (11) For the purposes of any conciliation, the conciliator may call a compulsory conference of the parties.

- (12) The Industrial Commission may at any time bring any conciliation or mediation to an end if the Industrial Commission considers that the conciliation or mediation will not result in the resolution of the matter.
- (13) Subject to subsection (14), nothing said or done in any conciliation or mediation under this section may subsequently be given in evidence without the consent of the parties to the conciliation or mediation.
- (14) The terms of any agreement between the parties to any conciliation or mediation may be given in evidence in subsequent proceedings (without the restriction imposed by subsection (13)).
- (15) The Industrial Commission must inform the Department when any conciliation or mediation under this section is concluded or brought to an end.
- (16) The Industrial Commission and the Department may consult from time to time about the processes and arrangements that should apply under this section, and prepare and publish information and guidelines to assist persons who may become involved in conciliation or mediation under this section.
- (17) The President of the Industrial Commission may make rules relating to—
  - (a) representation before the Industrial Commission in connection with the operation of this section; or
  - (b) the conduct of the parties to a conciliation or mediation under this section; or
  - (c) any other matter that, in the opinion of the President, is necessary or convenient for the purposes of any conciliation or mediation under this section.

## **56—Discrimination against workers**

- (1) An employer must not dismiss an employee, injure an employee in employment or threaten, intimidate or coerce an employee by reason of the fact that the employee—
  - (a) is a health and safety representative or a member of a health and safety committee or has performed the functions of a health and safety representative or of a member of a health and safety committee; or
  - (b) has assisted or given information to an inspector, health and safety representative or health and safety committee; or
  - (c) has made a complaint in relation to a matter affecting health, safety or welfare.

Maximum penalty: Division 5 fine.

- (2) An employer or prospective employer must not refuse or deliberately omit to offer employment to a prospective employee or treat a prospective employee less favourably than another prospective employee would be treated in relation to the terms on which employment is offered by reason of the fact that the prospective employee—
  - (a) has been a health and safety representative or a member of a health and safety committee or has performed the functions of a health and safety representative or of a member of a health and safety committee; or

- (b) has assisted or given information to an inspector, health and safety representative or health and safety committee; or
- (c) has made a complaint in relation to a matter affecting health, safety or welfare.

Maximum penalty: Division 5 fine.

- (3) If in proceedings for an offence against this section all the facts constituting the offence other than the reason for the defendant's action are proved, the onus of proving that the act of discrimination was not actuated by the reason alleged in the charge lies on the defendant.
- (4) Where a person is convicted of an offence against this section, the court may, in addition to any penalty it may impose, make one or both of the following orders:
  - (a) it may order the person to pay within a specified period to the person discriminated against such damages as it thinks fit to compensate that person;
  - (b) it may order that an employee be re-instated or re-employed in the employee's former position or, where that position is not reasonably available, in a similar position, on conditions determined by the court, or that a prospective employee be employed in the position for which the prospective employee had applied or a similar position.
- (5) This section does not derogate from any right under any other Act or law of a person against whom an offence has been committed.

### **57—Assignment of workers during a cessation of work**

Where work is suspended in consequence of a direction of a health and safety representative that work cease or on account of the issue of a default notice, an improvement notice or a prohibition notice, the employer may, while the work remains suspended, assign an employee to suitable alternative work.

### **58—Offences**

- (1) A person who contravenes or fails to comply with a provision of this Act is guilty of an offence.
- (2) A person who is guilty of an offence against this Act for which no penalty is specifically provided is liable to a Division 5 fine.
- (3) Subject to this Act, offences against this Act are summary offences.
- (4) The issuing of a default notice, improvement notice or prohibition notice under this Act does not prevent the institution of proceedings for an offence against this Act in relation to the subject matter of the notice.
- (5) Proceedings for an offence against this Act may be brought against—
  - (a) an agency or instrumentality of the Crown;
  - (ab) an administrative unit in the Public Service of the State;
  - (b) a person employed by or under the Crown.

- (5a) For the purposes of subsection (5)—
- (a) the proceedings will be taken against the relevant agency, instrumentality, administrative unit or person (the *responsible agency*) as if it were a distinct entity or person; and
  - (b) the responsible agency is to be specified in the charge for the offence; and
  - (c) except for proceedings against a natural person, the responsible agency may, during any proceedings for an offence, be changed by the prosecutor with the permission of the relevant court on the ground that there is now a successor to the relevant agency, instrumentality or administrative unit; and
  - (d) in proceedings against an administrative unit, the chief executive of the administrative unit, or a person authorised by that chief executive, may appear and provide evidence and make admissions on behalf of the administrative unit; and
  - (e) any penalty may be imposed against the responsible agency.
- (6) Subject to subsection (6a), proceedings for a summary offence against this Act must be commenced—
- (a) in the case of an expiable offence—within the time limits prescribed for expiable offences by the *Summary Procedure Act 1921*;
  - (b) in any other case—within 2 years of the date on which the offence is alleged to have been committed.
- (6a) The Director of Public Prosecutions may, by instrument in writing, extend a time limit that would otherwise apply under subsection (6) in a particular case if the Director of Public Prosecutions is satisfied that a prosecution could not reasonably be commenced within the relevant period due to a delay in the onset or manifestation of an injury or disease, a condition or defect of any kind, or any other relevant factor or circumstance.
- (6b) An apparently genuine document purporting to be signed by the Director of Public Prosecutions and to be an extension under subsection (6) will be accepted in any legal proceedings, in the absence of proof to the contrary, as proof of an extension in a particular case.
- (7) Proceedings for an offence against this Act may only be brought—
- (a) by the Minister; or
  - (ab) by the Director of Public Prosecutions; or
  - (ac) by the Director; or
  - (b) by an inspector; or
  - (c) if an employee has suffered injury as a result of an act or omission which is alleged to constitute an offence against this Act and proceedings have not been commenced by the Minister, the Director of Public Prosecutions, the Director or an inspector within 1 year of the date on which the offence is alleged to have been committed—by the employee.
- (8) However—
- (a) proceedings for an offence against an administrative unit in the Public Service of the State may only be brought by—

- (i) the Director of Public Prosecutions; or
    - (ii) the Director; and
  - (b) the approval of the Minister is required to bring proceedings under subsection (7)(c) unless 18 months have elapsed since the date on which the relevant offence is alleged to have been committed.
- (9) An apparently genuine document purporting to be signed by the Minister and to give an approval for the purposes of subsection (8)(b) will be accepted in any legal proceedings, in the absence of proof to the contrary, as proof of the approval.
- (10) An inspector is authorised to give expiation notices for alleged offences by or under this Act that are expiable.

### **59—Offence to endanger persons in workplaces**

- (1) A person is guilty of an offence if—
- (a) the person, without lawful excuse, acts in a manner that creates a substantial risk of death or serious harm to another who is in a workplace; and
  - (b) the person—
    - (i) knew that his or her act or acts would create that risk; or
    - (ii) was recklessly indifferent about whether his or her act or acts would create that risk.

Maximum penalty:

- (a) in the case of a natural person—imprisonment for 5 years or double the Division 1 fine;
  - (b) in the case of a body corporate or an administrative unit in the Public Service of the State—double the Division 1 fine.
- (2) An offence against subsection (1) is a minor indictable offence.
- (3) In this section—
- act* includes omitting to act.

### **59A—Imputation of conduct or state of mind of officer, employee etc**

- (1) For the purposes of proceedings for an offence against this Act—
- (a) the conduct and state of mind of an officer, employee or agent of a body corporate acting within the scope of his or her actual, usual or ostensible authority will be imputed to the body corporate;
  - (b) the conduct and state of mind of an employee of an administrative unit of the Public Service of the State acting within the scope of his or her actual, usual or ostensible authority will be imputed to the administrative unit;
  - (c) the conduct and state of mind of an employee or agent of a natural person acting within the scope of his or her actual, usual or ostensible authority will be imputed to that person,
- (but not so as to affect any personal liability of the officer, employee or agent).

- (2) It will be a defence in any criminal proceedings under the Act against a body corporate, an administrative unit of the Public Service of the State or a natural person where conduct or a state of mind is imputed to the body, administrative unit or person under subsection (1) if it is proved that the alleged contravention did not result from any failure on the defendant's part to take all reasonable and practicable measures to prevent the contravention or contraventions of the same or a similar nature.
- (3) A person who would, but for the defence provided by subsection (2), have contravened a provision of this Act is, despite that defence, to be taken to have contravened that provision for the purposes of the issuing of improvement notices or prohibition notices.
- (4) If—
  - (a) a natural person is convicted of an offence against this Act; and
  - (b) the person would not have been convicted of the offence but for the operation of subsection (1),the person is not liable to be punished by imprisonment for the offence.
- (5) For the purposes of this section, a reference to *conduct* or *acting* includes a reference to failure to act.

#### **59B—Statement of officer evidence against body corporate**

In proceedings for an offence against this Act by a body corporate, a statement made by an officer of the body corporate is admissible as evidence against the body corporate.

#### **59C—Liability of officers of body corporate**

- (1) If a body corporate or an administrative unit of the Public Service of the State contravenes a provision of this Act, and the contravention is attributable to an officer of the body corporate or an employee of the administrative unit failing to take reasonable care, then the officer or employee is guilty of an offence and liable to the same penalty as for an offence constituted by a contravention by a natural person of the provision contravened by the body corporate or administrative unit.
- (2) If an officer of a body corporate or an employee of an administrative unit is convicted of an offence under subsection (1), the officer or employee is not liable to be punished by imprisonment for the offence.
- (3) In determining whether an officer of a body corporate or an employee of an administrative unit is guilty of an offence under this section, the court must have regard to—
  - (a) what the officer or employee knew about the matter concerned; and
  - (b) the extent of the officer's or employee's ability to make, or participate in the making of, decisions that affect the body corporate or administrative unit in relation to the matter concerned; and
  - (c) whether the contravention by the body corporate or administrative unit is also attributable to an act or omission of any other person; and
  - (d) any other relevant matter.

- (4) An officer of a body corporate or an employee of an administrative unit may be prosecuted and convicted of an offence pursuant to subsection (1) whether or not there has been a finding by a court that the body corporate or administrative unit committed the contravention.
- (5) If, in proceedings against a body corporate or administrative unit for an offence against this Act—
- (a) information or a document was admitted in evidence against the body corporate or administrative unit; and
  - (b) an officer of the body corporate or an employee of an administrative unit had been required to give the information or produce the document under a provision of this Act; and
  - (c) the information or document was such as to tend to incriminate the body corporate or administrative unit of the offence,

the officer of the body corporate or the employee of the administrative unit will not be guilty of a contravention of this Act as a result of the body corporate or administrative unit having been found guilty of the offence in those proceedings.

## **60—Continuing or repeated offences**

- (1) Where a person is convicted of an offence against this Act and after that conviction the act or omission of that person that constituted the offence continues, that person is guilty of a further offence.

Maximum penalty: Division 3 fine.

- (2) Where a person is convicted of an offence against this Act, the court may, in addition to any penalty it may impose, order that person to take such steps as are specified in the order and within the time specified in the order to comply with this Act.
- (3) If the person to whom an order is directed under subsection (2) fails to comply with the order within the time specified in the order, that person is guilty of a further offence.

Maximum penalty: Division 2 fine.

- (4) Where in proceedings for an offence against this Act the court is satisfied that the accused—
- (a) has previously been convicted of the same offence; and
  - (b) has on the present occasion wilfully repeated the act or omission constituting the offence,

the court must, in addition to any penalty it may impose for the offence, impose a penalty of not more than \$40 000.

## **60A—Non-pecuniary penalties**

- (1) If a person is convicted of an offence against this Act, the court may, after taking into account any submissions and other relevant matters, in addition or in substitution for any penalty that it may impose—
- (a) order the convicted person to undertake, or to arrange for one or more employees to undertake, a course of training or education of a kind specified by the court;

- (b) order the convicted person to carry out a specified activity or project for the general improvement of occupational health, safety and welfare in the State, or in a sector of activity within the State;
  - (c) order the convicted person to take specified action to publicise the offence, its consequences, any penalty imposed, and any other related matter;
  - (d) order the convicted person to take specified action to notify specified persons or classes of persons of the offence, its consequences, any penalty imposed, and any other related matter (including, for example, the publication in an annual report or any other notice to shareholders of a company or the notification of persons aggrieved or affected by the convicted person's conduct).
- (2) The court may, in an order under subsection (1), fix a period for compliance and impose any other requirements the court considers necessary or expedient for the enforcement of the order.
- (3) If the person to whom an order is directed under subsection (1) fails to comply with the order, that person is guilty of a further offence.
- Maximum penalty: Division 4 fine.

## **61—Offences by bodies corporate**

- (1) Each body corporate carrying on business in the State must appoint one or more responsible officers for the purposes of this section.
- (2) A person appointed as a responsible officer under this section must be—
- (a) a member of the governing body of the body corporate who resides in the State; or
  - (b) the chief executive officer of the body corporate, if he or she resides in the State; or
  - (c) if no one is eligible for appointment under a preceding paragraph—a senior executive officer of the body corporate who resides in the State; or
  - (d) if no one is eligible for appointment under a preceding paragraph—an officer of the body corporate.
- (2a) A person who is appointed as a responsible officer under this section and who has not previously attended a course of training recognised or approved by the Advisory Committee for the purposes of this section must attend such a course of training within 3 months after his or her appointment.

Maximum penalty: Division 7 fine.

- (2b) The requirement for a person to attend a course of training under subsection (2a) lapses if the person ceases to be a responsible officer during the 3 month period referred to in that subsection.
- (3) A responsible officer must take reasonable steps to ensure compliance by the body corporate with its obligations under this Act.

Maximum penalty:

- (a) in a case where paragraph (b) does not apply—division 6 fine;

- (b) where the court is satisfied that the offence has contributed to the commission of an offence by the body corporate—a fine not exceeding the fine that is prescribed for the offence committed by the body corporate.
- (4) If a body corporate fails to appoint one or more responsible officers under this section, each officer of the body corporate will be taken to be a responsible officer for the purposes of subsection (3).
- (5) This section does not derogate from any other rule of law relating to the duties of officers of bodies corporate.

## **62—Health and safety in the public sector**

- (1) The chief executive officer of each administrative unit in the Public Service of the State must appoint a person to be responsible for the implementation of the requirements of this Act in that administrative unit.
- (2) For the purposes of this Act, an administrative unit will be taken to be the employer of any Public Sector employees assigned to work in the administrative unit (and may be held to be liable for any offence for which an employer may be liable).

## **63—Code of practice**

- (1) The Minister may, on the recommendation of the Advisory Committee, approve a code of practice for the purposes of this Act.
- (2) A code of practice may incorporate, adopt or apply, with or without modification, any other document prepared or published by any body or authority as in force at the time that the code of practice is issued or as in force from time to time.
- (4) The Minister may, on the recommendation of the Advisory Committee—
  - (a) approve the revision of the whole or a part of a code of practice; or
  - (b) revoke a code of practice.
- (5) The Minister must give notice in the Gazette of—
  - (a) the approval of a code of practice; or
  - (b) the approval of a revision of the whole or a part of a code of practice; or
  - (c) the revocation of a code of practice.
- (6) The Minister must cause a copy of—
  - (a) every approved code of practice; and
  - (b) where an approved code of practice has been revised and that revision has been approved—every approved code of practice as so revised; and
  - (c) where an approved code of practice has incorporated, adopted or applied any document,  
every such document, to be made available for inspection by members of the public without charge.
- (7) An approved code of practice and any approved revision of a code of practice will come into operation on the day on which the notice of approval is published in the Gazette or on such later day as may be specified in the notice.

- (8) An approved code of practice or the revision of a code of practice is subject to disallowance by Parliament.
- (9) Every approved code of practice or revision must be laid before both Houses of Parliament within 14 days of notice of its approval being published in the Gazette if Parliament is in session or, if Parliament is not then in session, within 14 days after the commencement of the next session of Parliament.
- (10) If either House of Parliament passes a resolution disallowing an approved code of practice or the revision of a code of practice, then the code of practice or revision ceases to have effect.
- (11) A resolution is not effective for the purposes of subsection (10) unless passed in pursuance of a notice of motion given within 14 sitting days (which need not all fall in the same session of Parliament) after the day on which the code of practice was laid before the House.

### **63A—Use of codes of practice in proceedings**

Where in proceedings for an offence against this Act it is proved that the defendant failed to observe a provision of an approved code of practice dealing with the matter in respect of which the offence is alleged to have been committed, the defendant is, in the absence of proof to the contrary, to be taken to have failed to exercise the standard of care required by this Act.

### **64—Evidentiary provision**

- (1) In proceedings for an offence against this Act, an allegation in the complaint that, at a specified time—
  - (a) a person was an employer at a specified workplace; or
  - (b) a person was an occupier of a specified workplace, or any other place where any plant to which this Act extends by virtue of Schedule 2 is situated; or
  - (c) a notice was given under this Act; or
  - (d) a notice required to be given under the regulations has not been given; or
  - (e) a prescribed fee has not been paid; or
  - (f) a person was an inspector,is, in the absence of proof to the contrary, proof of the matter so alleged.
- (2) Nothing said or done during the course of conciliation proceedings under this Act may subsequently be given in evidence in other proceedings under this Act.
- (3) In any legal proceedings, evidence of the contents of an approved code of practice, or of a document adopted or applied by, or referred to in, an approved code of practice or a regulation, may be given by production of a document purporting to be certified by or on behalf of the Minister as a true copy of the approved code of practice or other document.

## 66—Modifications of regulations

- (1) Where—
  - (a) the occupier of any place or an employer applies to the designated person under this section for the modification of the requirements of a regulation as they apply to that occupier or employer; and
  - (b) the designated person is satisfied that a modification of the regulations would not adversely affect the health, safety or welfare of any person,

the designated person may, by notice in writing to the occupier or employer, modify the requirements in the manner set out in the notice (as those requirements apply to any workplace, work, plant, substance or process specified in the notice) and while any such notice remains in force compliance with the provision as modified is for the purposes of this Act taken to be compliance with the regulation.

- (2) The occupier or employer must—
  - (a) display the notice or a copy of the notice in a prominent place at or near any workplace or plant that is affected by the notice; and
  - (b) provide a copy of the notice to any health and safety representative who represents employees at any workplace that is affected by the notice.

Maximum penalty: Division 6 fine.

- (3) The designated person must send to the Minister a copy of every notice issued under this section.
- (4) The designated person has an absolute discretion to vary or revoke a notice issued under this section.
- (5) A health and safety representative or a registered association representing one or more employees at a workplace that is affected by the notice may apply to the President of the Industrial Court for a review by a review committee of a notice issued under this section.
- (6) Pending the determination of a review under this section, the operation of the notice to which the review relates continues.
- (7) At the conclusion of a review under this section, a review committee may—
  - (a) confirm the notice to which the review relates; or
  - (b) confirm the notice with such modifications as it thinks fit; or
  - (c) cancel the notice.

## 67—Exemption from Act

- (1) Where—
  - (a) an employer or any other person applies to the Minister under this section for an exemption from all or any of the provisions of this Act; and
  - (b) the Minister is satisfied—
    - (i) that the granting of the exemption would not adversely affect the health, safety or welfare of any person; and
    - (ii) that it is reasonable to grant such an exemption,

the Minister may, by notice in writing to the employer or person, grant an exemption under this section.

- (2) A notice under subsection (1) may exempt—
  - (a) the employer or other person who applied for the exemption; or
  - (b) specified operations carried on by that employer or person; or
  - (c) a specified place under the management or control of that employer or person,from all or any of the provisions of this Act.
- (3) Before deciding on whether to grant an exemption under this section, the Minister must—
  - (a) consult with the Advisory Committee; and
  - (b) so far as is reasonably practicable, consult with—
    - (i) any registered association representing employers that might have an interest in the matter; and
    - (ii) any registered association representing one or more employees who might be affected by the granting of the exemption.
- (4) An exemption under this section may be granted subject to such limitations as the Minister thinks fit.
- (5) The Minister has an absolute discretion to revoke an exemption granted under this section.

#### **67A—Registration of employers**

- (1) Subject to subsection (2), a person who is required to be registered as an employer under the *Workers Rehabilitation and Compensation Act 1986* is also required to be registered under this Act.
- (2) A person is not required to be registered if the person is exempt from the obligation to be registered by the regulations.
- (3) WorkCover will undertake registrations under this section in conjunction with the registration of employers under the *Workers Rehabilitation and Compensation Act 1986*.
- (4) A periodical fee is payable in relation to a registration under this section.
- (5) Subject to this section, the amount of the fee will be set by WorkCover—
  - (a) taking into account the criteria prescribed by or under subsection (6); and
  - (b) on the basis that the total amount paid to WorkCover for a particular financial year by persons registered under this section should, so far as is reasonably practicable, equal the prescribed amount for that financial year.
- (6) For the purposes of subsection (5)(a), the criteria to be taken into account are—
  - (a) that the fee or fees paid by a particular person should reflect the aggregate remuneration paid to the person's employees in each class of industry in which the person employs employees; and
  - (b) that the fee or fees paid by a person in a particular industry should reflect the risk of work-related injuries in that industry; and

- (c) that the fee or fees paid by a particular person over a particular financial year should reflect any matters taken into account by WorkCover under section 67 of the *Workers Rehabilitation and Compensation Act 1986* for the purposes of the calculation or imposition of a levy under that Act,
- and such other criteria as may be prescribed by the regulations (which regulations may, if they so provide, revoke or replace any of the criteria referred to above).
- (7) A prescribed percentage of the prescribed amount for a particular financial year will be payable to the Department in accordance with guidelines established by the Treasurer.
- (8) The prescribed amount for a financial year will be an amount fixed for that financial year by the regulations (but if any such regulation is not made before the commencement of the relevant financial year, or is disallowed or revoked, then the prescribed amount for that financial year will be the amount that applied under this section for the preceding financial year).
- (8b) Subsection (5)(b) is subject to the following qualifications:
- (a) if the total amount paid under this section for a particular financial year exceeds the prescribed amount for that year, the amount that is sought to be recovered under subsection (5)(b) for the next financial year should be the prescribed amount for that year less the amount of that excess;
- (b) if the total amount paid under this section for a particular financial year is less than the prescribed amount for that year, the amount that is sought to be recovered under subsection (5)(b) for the next financial year should be the prescribed amount for that year plus the amount of that deficiency.
- (8c) A fee imposed under this section will be payable to WorkCover in accordance with the regulations.
- (8d) If a person fails to pay a fee, or the full amount of a fee, in accordance with the regulations, WorkCover may recover the unpaid amount as if it were unpaid levy under Part 5 of the *Workers Rehabilitation and Compensation Act 1986*.
- (9) The Department is entitled to information provided to WorkCover for the purposes of this section.
- (10) A person who fails to comply with this section is guilty of an offence.  
Maximum penalty: Division 6 fine.

### **67B—Portion of WorkCover levy to be used to improve occupational health and safety**

- (1) A part of the levy paid to WorkCover under Part 5 of the *Workers Rehabilitation and Compensation Act 1986* in any financial year will be payable by WorkCover to the Department to be applied towards the costs associated with the administration of this Act.
- (2) The amount payable under subsection (1) will be—
- (a) a set amount in respect of a particular financial year; or
- (b) a percentage of the levy paid to WorkCover in respect of a particular financial year,

as determined by the Minister by notice in the Gazette.

- (3) The Minister must consult with the board of management of WorkCover before making a determination under subsection (2).
- (4) If there is a disagreement between the Minister and the board of management of WorkCover as to the amount to be paid under subsection (1) in respect of a particular year, the board of management may, after publication of the determination under subsection (2), furnish to the Minister a written statement setting out its reasons for its disagreement with the Minister.
- (5) If a statement is furnished under subsection (4), the Minister must cause copies of the statement to be laid before both Houses of Parliament within 12 sitting days after the statement is received by the Minister.
- (6) A payment to the Department with respect to a financial year must be made (according to a determination of the Minister)—
  - (a) by instalments paid over a period specified by the Minister after consultation with the Treasurer; or
  - (b) by a lump sum paid by a date specified by the Minister after consultation with the Treasurer.
- (7) The Minister may, by notice in the Gazette, vary an earlier notice published under subsection (2).

### **67C—Five-yearly reports**

- (1) The Minister must, on a five-yearly basis, undertake or initiate a review of this Act.
- (2) A review must encompass—
  - (a) the work of the Advisory Committee; and
  - (b) the operation of this Act and the extent to which its objects are being attained; and
  - (c) other matters determined by the Minister to be relevant to a review of this Act.
- (3) The results of the review must be embodied in a written report.
- (4) The Minister must cause copies of the report to be laid before both Houses of Parliament within 12 sitting days after the report is completed for the purposes of subsection (1).

### **68—Consultation on regulations**

The Minister must consult with the Advisory Committee on any regulations proposed to be made before those regulations are made.

### **69—Regulations**

- (1) The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), those regulations may be made with respect to any of the matters specified in Schedule 1.

- (3) A regulation made under this Act in relation to the registration or licensing of any work, plant, process, substance or workplace may also—
- (a) prohibit any activity unless carried on under a licence or at registered premises or by means of registered equipment;
  - (b) prescribe the persons who may apply for registration or a licence;
  - (c) prescribe the manner and form of applications for registration or for a licence;
  - (d) prescribe fees for registration or for the issuing or holding of a licence;
  - (e) prescribe the terms and conditions of registration or for the holding of a licence;
  - (f) provide for the variation by the Director of terms and conditions imposed under paragraph (e);
  - (g) prescribe the circumstances in which registration or the holding of a licence may be cancelled or suspended;
  - (h) prescribe the manner of application for the renewal or transfer of registration or of a licence.
- (4) A right of appeal to the Industrial Court lies against—
- (a) a refusal to grant a registration or licence under the regulations; or
  - (b) a decision of the Director to vary the terms or conditions of registration or for holding a licence; or
  - (c) a decision to cancel or suspend a registration or licence.
- (5) An appeal must be instituted within one month of the date of the decision appealed against but the Industrial Court may, if it thinks fit, dispense with the requirement that the appeal should be instituted within that time.
- (6) The Industrial Court may on the hearing of an appeal, taking into account what is just and reasonable in the circumstances, exercise one or more of the following powers—
- (a) affirm, vary or quash the decision appealed against and make any incidental or other order that may be just and reasonable in the circumstances;
  - (b) remit the decision for reconsideration;
  - (c) make any order as to costs.
- (7) For the purposes of an appeal under this section, the Industrial Court will be constituted of a single Judge.
- (8) A right of appeal to the Full Industrial Court lies, with the permission of the Full Industrial Court, from a decision of a single Judge under subsection (6).
- (8a) A regulation made under this Act in relation to the notification of work-related injuries may provide that notice of prescribed classes of injury may be given to WorkCover in conjunction with the provision of information relating to claims for compensation under the *Workers Rehabilitation and Compensation Act 1986*.
- (8b) The Department is entitled to information relating to work-related injuries obtained by WorkCover under subsection (8a).

- (9) Regulations made under this Act may incorporate, adopt, apply or make prescriptions by reference to, with or without modification—
- (a) any code of practice issued by the Advisory Committee;
  - (b) any other document prepared or published by any body or authority as in force at the time the regulations are made or as in force from time to time.
- (10) The Minister must cause a copy of any document that has been incorporated, adopted or applied by regulations made under this Act or by reference to which a prescription is made by those regulations to be made available for inspection by members of the public without charge.
- (11) Regulations made under this Act—
- (a) may be of general or limited application; and
  - (b) may leave any matter or thing to be determined, dispensed with, regulated or prohibited according to the discretion of the Director or the designated person, either generally or in a particular case or class of case; and
  - (c) may make different prescriptions according to prescribed circumstances; and
  - (d) may differentiate between various classes of persons.



## Schedule 1—Regulations

- 1 Health, safety or welfare standards that must be complied with—
  - (i) at any workplace; or
  - (ii) in the performance of any work; or
  - (iii) in the use, cleaning, maintenance or transportation of any plant; or
  - (iv) in the use, handling, processing, storing, transporting or disposal of any substance; or
  - (v) in the design, manufacture, importing or supplying of any plant; or
  - (vi) in the manufacture or importing of any substance.
- 2 The safeguarding, siting, installing, testing, altering, repairing, maintaining or dismantling of any plant.
- 3 The testing, analysis, labelling or marking of any substance.
- 3A The procedures to be followed in respect of the registration of any person under this Act.
- 3B The information to be provided by persons who are required to be registered under this Act.
- 4 The registration or licensing of any work, plant, process, substance or workplace by the Director or any other prescribed person or authority.
- 5 The steps to be taken on the occurrence of any work-related injury.
- 6 The notification of work-related injuries.
- 7 The special monitoring of the health and welfare of employees in specified classes of work.
- 8 The notification of accidents and dangerous occurrences.
- 9 The issuing of certificates of competency or provisional certificates of competency for persons engaged in prescribed work and for the duration, variation, suspension or cancellation of such certificates.
- 10 The prohibition of the carrying on of prescribed activities at workplaces or the performance of prescribed work except by or under the supervision of persons with prescribed qualifications, training or experience.
- 11 The supply, use, testing and maintenance of clothing and equipment for occupational health, safety or welfare purposes.
- 12 Fire-safety rules and procedures and the provision and maintenance of fire protection equipment.
- 13 The appointment of persons who are to be responsible for the supervision of occupational safety in prescribed circumstances or industries.
- 14 The form and use of scaffolding, form work, false work and related equipment.
- 15 The carriage and handling of cash.
- 16 The provision of medical, nursing or first aid facilities at workplaces and the standards for such facilities.
- 17 The medical examination of employees.

- 18 The employment of young persons.
- 19 The safety of persons in isolated or remote areas.
- 20 Standards for the manual handling of loads by persons at work.
- 21 The safety of persons in the vicinity of any workplace or plant.
- 22 The minimum standards that must be observed in providing information, instruction and training for the health and safety of employees whose native language is not English and who are not reasonably fluent in English.
- 23 The giving of notices, in specified circumstances, to the Minister, an inspector or other prescribed person or authority.
- 24 The removal of asbestos from any place, the disposal of asbestos or the treatment of asbestos in any place.
- 25 The keeping and provision of records, returns and information for the purposes of this Act (including records relating to accidents and dangerous occurrences that occur at work and work-related injuries suffered by employees).
- 26 Procedures that are to be carried out on inspections under this Act.
- 27 Fees (including differential and periodic fees) for the purposes of this Act.
- 28 Forms for the purposes of this Act.
- 29 The service of notices under this Act.
- 30 The recovery of fees under this Act.
- 31 The exemption, either absolutely or subject to prescribed limitations or conditions, of persons or work or classes of persons or work from any provision of this Act.
- 32 In relation to penalties for breaches of the regulations—
  - (a) in the case of regulations prescribing standards for health or safety at work—penalties not exceeding a Division 2 fine;
  - (b) in any other case—penalties not exceeding a Division 6 fine.
- 33 Expiation fees for alleged offences against the regulations.

## Schedule 2—Extension of Act to specified plant

- 1 Subject to any exclusions or modifications prescribed by the regulations, this Act extends to the following types of plant (whether or not such plant is situated, operated or used at any workplace):
  - (a) amusement structures;
  - (b) cranes;
  - (c) hoists;
  - (d) lifts;
  - (e) pressure equipment.
- 2 For the purposes of clause 1—

***amusement structure*** means a structure or device of a prescribed kind operated for hire or reward which is used or designed to be used for amusement, recreation, sport, sightseeing or entertainment and on which persons may be moved, carried, raised, lowered or supported by any part of the structure or device;

**crane** means an appliance by means of which loads may be raised or lowered and moved horizontally and includes the supporting structure and foundations of such an appliance;

**hoist** means an appliance by means of which loads may be raised or lowered that is not a crane or lift;

**lift** means a permanent apparatus (or apparatus intended to be permanent) which is in or attached to a building or structure and by means of which persons, goods or materials may be raised or lowered within or on a car, cage or platform and the movement of which is restricted by a guide or guides and includes an apparatus in the nature of a chairlift, escalator, moving walk or stairway lift, and any supporting structure, machinery, equipment, gear, lift-well, enclosure and entrance;

**pressure equipment** means—

- (a) any boiler, being a vessel, or an arrangement of vessels and inter-connecting parts, in which steam or other vapour is generated, or water or other liquid is heated at a pressure greater than atmospheric pressure by the use of fire, the products of combustion, electrical power or other similar means; or
- (b) any pressure vessel (other than a boiler), being a vessel which is subject to internal or external pressure greater than atmospheric pressure and includes any interconnected part, component, valve, gauge or other fitting up to the first point of connection to any piping; or
- (c) any assembly (other than a boiler or pressure vessel) of a prescribed kind consisting of pipes, pipe fittings, valves and pipe accessories which are subject to internal or external pressure.

## Schedule 3—The Mining and Quarrying Occupational Health and Safety Committee

### 1—The Committee

- (1) The *Mining and Quarrying Occupational Health and Safety Committee* (the **Committee**) continues in existence.
- (2) The Committee will consist of 7 persons appointed by the Minister, of whom—
  - (a) 2 will be persons working in the field of occupational health and safety nominated by the Advisory Committee; and
  - (b) 1 will be a member of the Department who has experience in the mining and quarrying industries; and
  - (c) 1 will be a person nominated by the South Australian Chamber of Mines and Energy, and 1 will be a person nominated by *Cement Concrete and Aggregates Australia*, to represent the interests of employers involved in the mining and quarrying industries; and
  - (d) 2 will be persons nominated by the United Trades and Labor Council to represent the interests of workers who work in the mining and quarrying industries.
- (3) The Minister will appoint one of the members of the Committee appointed under subclause (2)(a) to be the presiding member of the Committee.

- (4) The Minister may appoint a suitable person to be a deputy of a member of the Committee and to act as a member of the Committee during any period of absence of the member.
  - (5) A member of the Committee may be appointed for a term not exceeding 3 years determined by the Minister and will, on the expiration of a term of appointment, be eligible for reappointment.
  - (6) The Minister may, on reasonable grounds, remove a member of the Committee from office at any time.
  - (7) A member of the Committee may resign by written notice to the Minister.
  - (8) An act or proceeding of the Committee is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.
  - (9) 4 members of the Committee constitute a quorum of the Committee.
  - (10) In the absence of the presiding member at a meeting of the Committee, the members present may decide who is to preside.
  - (11) A decision carried by at least 4 members of the Committee is a decision of the Committee.
  - (12) Each member present at a meeting of the Committee is entitled to 1 vote on any matter arising for decision at the meeting.
  - (13) The Committee must cause an accurate record to be kept of its proceedings.
  - (14) Subject to this Schedule, the business of the Committee will be conducted in a manner determined by the Committee.
  - (15) A member of the Committee who has a direct or indirect pecuniary interest in a matter under consideration by the Committee—
    - (a) must disclose the nature of the interest to the Committee; and
    - (b) must not take part in any deliberation or decision of the Committee with respect to the matter.
- Maximum penalty: \$2 000.
- (16) A disclosure under subclause (15) must be recorded in the minutes of the Committee.
  - (17) The Committee may, in connection with the performance of its functions, make use of the services, facilities and staff of the Department.

## **2—Application of funds**

- (1) Money available to the Committee from the Mining and Quarrying Industries Fund under Schedule 1 of the *Workers Rehabilitation and Compensation Act 1986* may be used for any of the following purposes:
  - (a) to promote and support practices, procedures and arrangements designed to protect workers from silicosis;
  - (b) to support education in the field of occupational health or safety in the mining and quarrying industries;
  - (c) to initiate or support research and studies into occupational health or safety that could benefit workers in the mining and quarrying industries;

- (d) to promote and support persons or organisations working to prevent, alleviate or treat the kinds of disabilities suffered by workers in the mining and quarrying industries;
  - (e) to support any other kind of activity that could directly or indirectly improve occupational health or safety in the mining and quarrying industries or assist in the rehabilitation of disabled workers in those industries.
- (2) The Committee has all such powers as are reasonably necessary for the effective performance of its functions (including the power to establish subcommittees and to engage, as may be appropriate, experts or consultants to assist the Committee in the performance of its functions).
  - (3) The Committee must, in making grants of money under this Schedule, give preference to supporting projects directed at improving occupational health or safety in those industries that involve exposure to silica dust and in particular to supporting specialised research and training projects directed at that purpose in South Australia.
  - (4) The Committee must not spend any part of the principal standing to the credit of Part B of the Mining and Quarrying Industries Fund without the specific approval of the Minister and in any case the Committee is not to spend in any financial year more than 20% of the principal that, at the commencement of that financial year, is standing to the credit of that part of the fund.
  - (5) The Committee must after the end of each financial year prepare a report on its operations during that financial year.
  - (6) The report must be submitted to the Minister in conjunction with the annual report of the Advisory Committee for the relevant financial year (and laid before each House of Parliament by the Minister together with the Advisory Committee's annual report).

### **3—Ministerial control**

The Committee is, in the performance of its functions, subject to the control and direction of the Minister.



## Legislative history

### Notes

- This version is comprised of the following:

Part 1	1.1.2008
Part 2	15.8.2005
Part 3	15.8.2005
Part 4	15.8.2005
Part 5	15.8.2005
Part 6	15.8.2005
Part 7	4.9.2006
Part 8	1.1.2008
Schedules	15.8.2005
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Legislation repealed by principal Act

The *Occupational Health, Safety and Welfare Act 1986* repealed the following:

*Industrial Safety, Health and Welfare Act 1972*

### Legislation amended by principal Act

The *Occupational Health, Safety and Welfare Act 1986* amended the following:

*Industrial Conciliation and Arbitration Act 1972*

*Mines and Works Inspection Act 1920*

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1986	125	<i>Occupational Health, Safety and Welfare Act 1986</i>	24.12.1986	16.4.1987 ( <i>Gazette 2.4.1987 p806</i> ) except ss 3—6, 19—71 & Schs 1—3— 30.11.1987 ( <i>Gazette 8.10.1987 p1068</i> )
1989	24	<i>Occupational Health, Safety and Welfare Act Amendment Act 1989</i>	27.4.1989	22.6.1989 ( <i>Gazette 22.6.1989 p1709</i> ) except ss 9 & 11—1.7.1990 ( <i>Gazette 24.5.1990 p1404</i> )
1990	67	<i>Occupational Health, Safety and Welfare Act Amendment Act 1990</i>	20.12.1990	1.1.1991 ( <i>Gazette 20.12.1990 p1842</i> )

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1993	1	<i>Statutes Amendment (Chief Inspector) Act 1993</i>	25.2.1993	1.7.1993 ( <i>Gazette 17.6.1993 p1974</i> )
1993	46	<i>Occupational Health, Safety and Welfare (Plant) Amendment Act 1993</i>	20.5.1993	3.4.1995 ( <i>Gazette 23.2.1995 p422</i> )
1993	51	<i>Occupational Health, Safety and Welfare (Registration Fees) Amendment Act 1993</i>	20.5.1993	1.7.1993: s 2
1994	50	<i>Occupational Health, Safety and Welfare (Administration) Amendment Act 1994</i>	16.6.1994	1.7.1994 ( <i>Gazette 30.6.1994 p1842</i> ) except s 24(d)—1.7.1994: s 2(2)(c)
1996	34	<i>Statutes Amendment and Repeal (Common Expiation Scheme) Act 1996</i>	2.5.1996	Sch (cl 26)—3.2.1997 ( <i>Gazette 19.12.1996 p1923</i> )
2000	11	<i>Offshore Minerals Act 2000</i>	4.5.2000	4.5.2002 (s 7(5) <i>Acts Interpretation Act 1915</i> )
2000	86	<i>Occupational Health, Safety and Welfare (Penalties) Amendment Act 2000</i>	14.12.2000	1.1.2001 ( <i>Gazette 21.12.2000 p3689</i> )
2003	44	<i>Statute Law Revision Act 2003</i>	23.10.2003	Sch 1—24.11.2003 ( <i>Gazette 13.11.2003 p4048</i> )
2005	41	<i>Occupational Health, Safety and Welfare (SafeWork SA) Amendment Act 2005</i>	14.7.2005	Pt 2 (ss 4—31), Sch 1 (c11 9—14) & Sch 2—15.8.2005 ( <i>Gazette 11.8.2005 p3011</i> ); Sch 1 (cl 8)—1.1.2006 ( <i>Gazette 1.12.2005 p4072</i> )
2006	17	<i>Statutes Amendment (New Rules of Civil Procedure) Act 2006</i>	6.7.2006	Pt 56 (ss 174—176)—4.9.2006 ( <i>Gazette 17.8.2006 p2831</i> )
<b>2007</b>	<b>54</b>	<b><i>Occupational Health, Safety and Welfare (Penalties) Amendment Act 2007</i></b>	<b>29.11.2007</b>	<b>1.1.2008 (<i>Gazette 13.12.2007 p4812</i>)</b>

## Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended by 50/1994 s 3	1.7.1994
	amended under <i>Legislation Revision and Publication Act 2002</i>	24.11.2003
Pt 1		
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	24.11.2003
s 3	amended by 46/1993 s 3	3.4.1995
s 4		
s 4(1)		
Advisory Committee	inserted by 50/1994 s 4(a)	1.7.1994
	substituted by 41/2005 s 4(1)	15.8.2005
appointed member	inserted by 41/2005 s 4(1)	15.8.2005

<i>the Chief Inspector</i>	<i>deleted by 1/1993 s 53(a)</i>	1.7.1993
<i>the Commission Corporation</i>	<i>deleted by 50/1994 s 4(b)</i>	1.7.1994
	<i>inserted by 50/1994 s 4(c)</i>	1.7.1994
	<i>deleted by 41/2005 s 4(2)</i>	15.8.2005
Department	inserted by 41/2005 s 4(2)	15.8.2005
the designated person	inserted by 1/1993 s 53(b)	1.7.1993
	amended by 50/1994 s 4(d)	1.7.1994
	amended by 11/2000 Sch 2	4.5.2002
	amended by 41/2005 Sch 2	15.8.2005
<i>the Director</i>	<i>inserted by 1/1993 s 53(b)</i>	1.7.1993
	<i>(b) deleted by 50/1994 s 4(e)</i>	1.7.1994
	<i>deleted by 41/2005 s 4(3)</i>	15.8.2005
Director	inserted by 41/2005 s 4(3)	15.8.2005
<i>the Industrial Commission</i>	<i>deleted by 41/2005 Sch 2</i>	15.8.2005
Industrial Commission	inserted by 41/2005 Sch 2	15.8.2005
<i>the Industrial Court</i>	<i>deleted by 41/2005 Sch 2</i>	15.8.2005
Industrial Court	inserted by 41/2005 Sch 2	15.8.2005
inspector	amended by 50/1994 s 4(f)	1.7.1994
	amended by 11/2000 Sch 2	4.5.2002
	amended by 41/2005 Sch 2	15.8.2005
metropolitan area	amended by 41/2005 Sch 2	15.8.2005
plant	substituted by 46/1993 s 4(a)	3.4.1995
record	inserted by 41/2005 s 4(4)	15.8.2005
registered association	substituted by 50/1994 s 4(g)	1.7.1994
	amended by 41/2005 Sch 2	15.8.2005
WorkCover	inserted by 41/2005 s 4(5)	15.8.2005
work group	amended by 67/1990 s 3(a)	1.1.1991
workplace	substituted by 67/1990 s 3(b)	1.1.1991
s 4(2) and (3)	amended by 41/2005 Sch 2	15.8.2005
s 4(4a)	inserted by 46/1993 s 4(b)	3.4.1995
s 4(5)	substituted by 86/2000 s 3	1.1.2001
	<b>substituted by 54/2007 s 4</b>	<b>1.1.2008</b>
<i>Pt 2 before substitution by 41/2005</i>	<i>amended by 24/1989 ss 3–8</i>	22.6.1989
	<i>amended by 67/1990 ss 4, 5</i>	1.1.1991
	<i>amended by 1/1993 s 54</i>	1.7.1993
	<i>substituted by 50/1994 s 5</i>	1.7.1994
s 7		
s 7(3)	<i>amended by 44/2003 s 3(1) (Sch 1)</i>	24.11.2003

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s 9		
s 9(5)	<i>amended by 86/2000 s 7 (Sch)</i>	<i>1.1.2001</i>
s 12	<i>amended by 86/2000 s 7 (Sch)</i>	<i>1.1.2001</i>
Pt 2	inserted by 41/2005 s 5	15.8.2005
Pt 3		
s 19		
s 19(1)	amended by 86/2000 s 7 (Sch)	1.1.2001
	amended by 41/2005 Sch 2	15.8.2005
s 19(2)	<i>deleted by 67/1990 s 6(a)</i>	<i>1.1.1991</i>
s 19(3)	amended by 67/1990 s 6(b), (c)	1.1.1991
	amended by 41/2005 s 6, Sch 2	15.8.2005
s 20		
s 20(1)	amended by 67/1990 s 7(a)	1.1.1991
	amended by 86/2000 s 7 (Sch)	1.1.2001
	amended by 41/2005 Sch 2	15.8.2005
s 20(2)	<i>deleted by 67/1990 s 7(b)</i>	<i>1.1.1991</i>
s 21		
s 21(1)	amended by 50/1994 s 6	1.7.1994
	substituted by 86/2000 s 4	1.1.2001
s 21(1a) and (1b)	inserted by 86/2000 s 4	1.1.2001
s 22	substituted by 86/2000 s 5	1.1.2001
s 22(2)	substituted by 41/2005 s 7	15.8.2005
s 23	amended by 86/2000 s 7 (Sch)	1.1.2001
	amended by 41/2005 Sch 2	15.8.2005
s 23A	inserted by 67/1990 s 8	1.1.1991
s 23A(1) and (2)	amended by 86/2000 s 7 (Sch)	1.1.2001
	amended by 41/2005 Sch 2	15.8.2005
s 24		
s 24(1)	amended by 46/1993 s 5(a)	3.4.1995
	amended by 86/2000 s 7 (Sch)	1.1.2001
	amended by 41/2005 Sch 2	15.8.2005
s 24(2)	amended by 46/1993 s 5(b)	3.4.1995
	amended by 86/2000 s 7 (Sch)	1.1.2001
	amended by 41/2005 Sch 2	15.8.2005
s 24(2aa)	inserted by 46/1993 s 5(c)	3.4.1995
s 24(2a)	inserted by 67/1990 s 9(a)	1.1.1991
	amended by 86/2000 s 7 (Sch)	1.1.2001
	amended by 41/2005 Sch 2	15.8.2005
s 24(3)	amended by 86/2000 s 7 (Sch)	1.1.2001
	amended by 41/2005 Sch 2	15.8.2005
s 24(4)	inserted by 67/1990 s 9(b)	1.1.1991
s 24A	inserted by 46/1993 s 6	3.4.1995
s 24A(1)	amended by 86/2000 s 7 (Sch)	1.1.2001

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	amended by 41/2005 Sch 2	15.8.2005
s 25		
s 25(1)	amended by 41/2005 Sch 2	15.8.2005
Pt 4		
Pt 4 Div 2		
s 26A	inserted by 67/1990 s 10	1.1.1991
s 27	substituted by 67/1990 s 10	1.1.1991
s 27(6)	amended by 50/1994 s 7	1.7.1994
	amended by 41/2005 s 8	15.8.2005
s 28		
s 28(1)	amended by 41/2005 Sch 2	15.8.2005
s 28(2)	amended by 67/1990 s 11(a)	1.1.1991
s 28(3)	substituted by 67/1990 s 11(b)	1.1.1991
	amended by 50/1994 s 8(a)	1.7.1994
	amended by 41/2005 s 9(1)	15.8.2005
s 28(4)	amended by 67/1990 s 11(c)	1.1.1991
s 28(5)	amended by 50/1994 s 8(b)	1.7.1994
s 28(6)	amended by 67/1990 s 11(d)	1.1.1991
s 28(6a)	inserted by 41/2005 s 9(2)	15.8.2005
s 28(7)	amended by 41/2005 Sch 2	15.8.2005
s 28(8)	substituted by 67/1990 s 11(e)	1.1.1991
s 28(9)	amended by 67/1990 s 11(f)	1.1.1991
	amended by 41/2005 Sch 2	15.8.2005
s 28(10)	amended by 41/2005 Sch 2	15.8.2005
s 28(12)	amended by 50/1994 s 8(c)	1.7.1994
	amended by 41/2005 s 9(3), Sch 2	15.8.2005
s 29		
s 29(1)	substituted by 67/1990 s 12	1.1.1991
s 30		
s 30(1)	amended by 67/1990 s 13(a)	1.1.1991
	amended by 41/2005 Sch 2	15.8.2005
s 30(2)	amended by 67/1990 s 13(b), (c)	1.1.1991
	amended by 41/2005 Sch 2	15.8.2005
s 30(3)	substituted by 67/1990 s 13(d)	1.1.1991
s 30(4)	amended by 67/1990 s 13(e), (f)	1.1.1991
s 30(7)	amended by 41/2005 Sch 2	15.8.2005
s 31		
s 31(1)	substituted by 67/1990 s 14(a)	1.1.1991
s 31(1a)	inserted by 50/1994 s 9	1.7.1994
s 31(2) and (3)	amended by 41/2005 Sch 2	15.8.2005
s 31(4)	substituted by 67/1990 s 14(b)	1.1.1991
s 31(6)	amended by 67/1990 s 14(c)	1.1.1991
	amended by 41/2005 Sch 2	15.8.2005

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s 31(7)	amended by 41/2005 Sch 2	15.8.2005
s 31(9)—(11)	amended by 41/2005 Sch 2	15.8.2005
s 31(12)	amended by 67/1990 s 14(d)	1.1.1991
Pt 4 Div 2A	inserted by 41/2005 s 10	15.8.2005
Pt 4 Div 3		
s 32		
s 32(1)	amended by 67/1990 s 15(a)—(e)	1.1.1991
s 32(3)	amended by 67/1990 s 15(f), (g)	1.1.1991
	amended by 50/1994 s 10	1.7.1994
	amended by 41/2005 s 11	15.8.2005
s 32(5)	amended by 67/1990 s 15(h)	1.1.1991
s 32(6)	amended by 41/2005 Sch 2	15.8.2005
s 32(7)	amended by 86/2000 s 7 (Sch)	1.1.2001
s 33		
s 33(1)	amended by 67/1990 s 16	1.1.1991
s 34		
s 34(1)	substituted by 67/1990 s 17(a)	1.1.1991
	amended by 1/1993 s 55	1.7.1993
	amended by 41/2005 Sch 2	15.8.2005
s 34(3)	amended by 67/1990 s 17(b)	1.1.1991
	amended by 50/1994 s 11(a)	1.7.1994
	substituted by 41/2005 s 12(1)	15.8.2005
s 34(4)	amended by 67/1990 s 17(c)	1.1.1991
	substituted by 41/2005 s 12(1)	15.8.2005
s 34(5)	amended by 50/1994 s 11(b)	1.7.1994
	substituted by 41/2005 s 12(1)	15.8.2005
s 34(5a)	inserted by 41/2005 s 12(1)	15.8.2005
s 34(6)	amended by 41/2005 s 12(2)	15.8.2005
Pt 4 Div 4		
s 35		
s 35(1)	amended by 41/2005 Sch 2	15.8.2005
s 35(2)	amended by 67/1990 s 18(a)	1.1.1991
	amended by 41/2005 Sch 2	15.8.2005
s 35(3)	amended by 67/1990 s 18(b)	1.1.1991
	amended by 41/2005 Sch 2	15.8.2005
s 35(4)	amended by 86/2000 s 7 (Sch)	1.1.2001
	amended by 41/2005 Sch 2	15.8.2005
s 35(5)	amended by 67/1990 s 18(c)	1.1.1991
s 35(7)	amended by 86/2000 s 7 (Sch)	1.1.2001
	amended by 41/2005 Sch 2	15.8.2005
s 35(8)	amended by 67/1990 s 18(d)	1.1.1991
	amended by 86/2000 s 7 (Sch)	1.1.2001
	amended by 41/2005 Sch 2	15.8.2005

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s 35(9)	amended by 67/1990 s 18(e)	1.1.1991
s 35(11)	amended by 41/2005 Sch 2	15.8.2005
s 35(12)	substituted by 67/1990 s 18(f)	1.1.1991
	amended by 86/2000 s 7 (Sch)	1.1.2001
s 35(13)	amended by 86/2000 s 7 (Sch)	1.1.2001
	amended by 41/2005 Sch 2	15.8.2005
s 36		
s 36(1)	amended by 67/1990 s 19(a)	1.1.1991
	amended by 41/2005 Sch 2	15.8.2005
s 36(2)	amended by 67/1990 s 19(b)	1.1.1991
	amended by 41/2005 Sch 2	15.8.2005
s 36(3)	amended by 41/2005 Sch 2	15.8.2005
s 36(4)	amended by 67/1990 s 19(c)	1.1.1991
	amended by 41/2005 Sch 2	15.8.2005
s 37		
s 37(1) and (2)	amended by 41/2005 Sch 2	15.8.2005
s 37(4)	amended by 67/1990 s 20	1.1.1991
	amended by 41/2005 Sch 2	15.8.2005
s 37(5)	amended by 86/2000 s 7 (Sch)	1.1.2001
s 37(8)	amended by 41/2005 Sch 2	15.8.2005
s 37A	inserted by 41/2005 s 13	15.8.2005
Pt 5		
s 38		
s 38(1)	amended by 1/1993 s 56(a)	1.7.1993
	amended by 50/1994 s 12(a)	1.7.1994
	amended by 46/1993 s 7(a)	3.4.1995
	amended by 41/2005 s 14(1)	15.8.2005
s 38(1a)	inserted by 67/1990 s 21(a)	1.1.1991
	substituted by 46/1993 s 7(b)	3.4.1995
s 38(5)	substituted by 41/2005 s 14(2)	15.8.2005
s 38(6)	amended by 1/1993 s 56(b)	1.7.1993
	amended by 50/1994 s 12(b)	1.7.1994
	substituted by 41/2005 s 14(2)	15.8.2005
s 38(7)	amended by 41/2005 Sch 2	15.8.2005
s 38(8)	amended by 1/1993 s 56(c)	1.7.1993
	amended by 50/1994 s 12(c)	1.7.1994
	amended by 86/2000 s 7 (Sch)	1.1.2001
	amended by 41/2005 Sch 2	15.8.2005
s 38(9)	amended by 46/1993 s 7(c)	3.4.1995
	amended by 41/2005 Sch 2	15.8.2005
s 38(10)	amended by 67/1990 s 21(b)	1.1.1991
	amended by 41/2005 Sch 2	15.8.2005
s 38(11)	amended by 1/1993 s 56(d)	1.7.1993

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	amended by 50/1994 s 12(d)	1.7.1994
	amended by 86/2000 s 7 (Sch)	1.1.2001
	amended by 41/2005 s 14(3), (4), Sch 2	15.8.2005
Pt 6		
s 39		
s 39(1)	amended by 67/1990 s 22(a)	1.1.1991
s 39(2)	amended by 67/1990 s 22(b)	1.1.1991
	amended by 41/2005 s 15(1)	15.8.2005
s 39(4)	amended by 86/2000 s 7 (Sch)	1.1.2001
	amended by 41/2005 s 15(2)	15.8.2005
s 39(5) and (6)	inserted by 41/2005 s 15(3)	15.8.2005
s 40		
s 40(1)	amended by 46/1993 s 8	3.4.1995
	substituted by 41/2005 s 16(1)	15.8.2005
s 40(2)	substituted by 41/2005 s 16(1)	15.8.2005
s 40(3)	amended by 41/2005 s 16(2)	15.8.2005
s 40(4)	amended by 86/2000 s 7 (Sch)	1.1.2001
s 41		
s 41(1)	amended by 86/2000 s 7 (Sch)	1.1.2001
	amended by 41/2005 Sch 2	15.8.2005
s 41(2)	substituted by 67/1990 s 23	1.1.1991
	amended by 46/1993 s 9	3.4.1995
	amended by 86/2000 s 7 (Sch)	1.1.2001
s 41(3)	amended by 86/2000 s 7 (Sch)	1.1.2001
	amended by 41/2005 Sch 2	15.8.2005
s 42		
s 42(1)	amended by 67/1990 s 24(a)	1.1.1991
	amended by 46/1993 s 10(a)	3.4.1995
s 42(3)	amended by 41/2005 Sch 2	15.8.2005
s 42(5)	amended by 67/1990 s 24(b)	1.1.1991
	amended by 46/1993 s 10(b)	3.4.1995
s 43		
s 43(2)	amended by 67/1990 s 25	1.1.1991
	amended by 41/2005 Sch 2	15.8.2005
s 43(3)	amended by 86/2000 s 7 (Sch)	1.1.2001
s 45		
s 45(1)	amended by 46/1993 s 11	3.4.1995
s 45(3)	amended by 86/2000 s 7 (Sch)	1.1.2001
Pt 7		
s 46	amended by 41/2005 Sch 2	15.8.2005
s 47		
s 47(1)—(4)	amended by 41/2005 Sch 2	15.8.2005
s 47(6)	inserted by 50/1994 s 13	1.7.1994

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s 48		
s 48(1)	amended by 41/2005 Sch 2	15.8.2005
s 48(3) and (4)	amended by 41/2005 Sch 2	15.8.2005
s 48(8)	amended by 86/2000 s 7 (Sch)	1.1.2001
	amended by 41/2005 Sch 2	15.8.2005
s 49		
s 49(4)	amended by 17/2006 s 174	4.9.2006
s 49(6)	amended by 41/2005 Sch 2	15.8.2005
Pt 8		
s 51		
s 51(1)	amended by 50/1994 s 14	1.7.1994
	amended by 41/2005 s 17	15.8.2005
s 51(2)	amended by 41/2005 Sch 2	15.8.2005
s 53	amended by 1/1993 s 57	1.7.1993
	substituted by 50/1994 s 15	1.7.1994
s 53(1)	amended by 41/2005 s 18	15.8.2005
s 54		
s 54(1)	substituted by 50/1994 s 16(a)	1.7.1994
	amended by 41/2005 s 19(1)	15.8.2005
s 54(1a)	inserted by 50/1994 s 16(a)	1.7.1994
	amended by 41/2005 s 19(2)	15.8.2005
s 54(2)	amended by 50/1994 s 16(b)	1.7.1994
s 54A	inserted by 41/2005 s 20	15.8.2005
s 55		
s 55(1)	substituted by 50/1994 s 17(a)	1.7.1994
	amended by 86/2000 s 7 (Sch)	1.1.2001
s 55(1a)	inserted by 50/1994 s 17(a)	1.7.1994
	amended by 41/2005 s 21	15.8.2005
s 55(1b) and (1c)	inserted by 50/1994 s 17(a)	1.7.1994
s 55(2)	amended by 86/2000 s 7 (Sch)	1.1.2001
	amended by 41/2005 Sch 2	15.8.2005
s 55A	inserted by 41/2005 s 22	15.8.2005
s 56		
s 56(1) and (2)	amended by 86/2000 s 7 (Sch)	1.1.2001
	amended by 41/2005 Sch 2	15.8.2005
s 56(3)	amended by 41/2005 Sch 2	15.8.2005
s 58		
s 58(5)	amended by 41/2005 s 23(1)	15.8.2005
s 58(5a)	inserted by 41/2005 s 23(2)	15.8.2005
	amended by 17/2006 s 175	4.9.2006
s 58(6)	substituted by 86/2000 s 6	1.1.2001
	amended by 41/2005 s 23(3)	15.8.2005
s 58(6a) and (6b)	inserted by 41/2005 s 23(4)	15.8.2005

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s 58(7)	substituted by 86/2000 s 6	1.1.2001
	amended by 41/2005 s 23(5), (6)	15.8.2005
s 58(8)	inserted by 86/2000 s 6	1.1.2001
	substituted by 41/2005 s 23(7)	15.8.2005
s 58(9)	inserted by 86/2000 s 6	1.1.2001
	amended by 41/2005 s 23(8)	15.8.2005
s 58(10)	inserted by 41/2005 s 23(9)	15.8.2005
<b>s 59</b>	<b>substituted by 54/2007 s 5</b>	<b>1.1.2008</b>
<b>ss 59A—59C</b>	<b>inserted by 54/2007 s 5</b>	<b>1.1.2008</b>
s 60		
s 60(1) and (3)	amended by 86/2000 s 7 (Sch)	1.1.2001
s 60(4)	amended by 86/2000 s 7 (Sch)	1.1.2001
	amended by 41/2005 Sch 2	15.8.2005
s 60A	inserted by 67/1990 s 26	1.1.1991
	amended by 50/1994 s 18	1.7.1994
	deleted by 34/1996 s 4 (Sch cl 26)	3.2.1997
	inserted by 41/2005 s 24	15.8.2005
s 61	substituted by 67/1990 s 27	1.1.1991
s 61(2a) and (2b)	inserted by 41/2005 s 25	15.8.2005
s 61(3)	amended by 86/2000 s 7 (Sch)	1.1.2001
s 62		
s 62(1)	s 62 redesignated as s 62(1) by 41/2005 s 26	15.8.2005
	amended by 41/2005 Sch 2	15.8.2005
s 62(2)	inserted by 41/2005 s 26	15.8.2005
s 63		
s 63(1)	amended by 50/1994 s 19(a)	1.7.1994
s 63(3)	<i>deleted by 50/1994 s 19(b)</i>	<i>1.7.1994</i>
s 63(4)	amended by 50/1994 s 19(c)	1.7.1994
s 63(5)—(7)	amended by 41/2005 Sch 2	15.8.2005
s 63A	inserted by 67/1990 s 28	1.1.1991
	amended by 50/1994 s 20	1.7.1994
s 64		
s 64(1)	amended by 46/1993 s 12	3.4.1995
	amended by 41/2005 Sch 2	15.8.2005
s 64(2)	amended by 41/2005 Sch 2	15.8.2005
s 64(3)	inserted by 67/1990 s 29	1.1.1991
s 65	<i>amended by 1/1993 s 58</i>	<i>1.7.1993</i>
	<i>substituted by 50/1994 s 21</i>	<i>1.7.1994</i>
	<i>deleted by 41/2005 s 27</i>	<i>15.8.2005</i>
s 66		
s 66(1)	amended by 1/1993 s 59(a)	1.7.1993
	amended by 46/1993 s 13(a), (b)	3.4.1995
	amended by 41/2005 Sch 2	15.8.2005

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s 66(2)	amended by 46/1993 s 13(c), (d)	3.4.1995
	amended by 86/2000 s 7 (Sch)	1.1.2001
	amended by 41/2005 Sch 2	15.8.2005
s 66(3)	amended by 1/1993 s 59(b)	1.7.1993
	amended by 50/1994 s 22	1.7.1994
	amended by 41/2005 Sch 2	15.8.2005
s 66(4)	amended by 67/1990 s 30	1.1.1991
	amended by 1/1993 s 59(c)	1.7.1993
s 66(6)	amended by 41/2005 Sch 2	15.8.2005
s 67		
s 67(1)	amended by 50/1994 s 23(a)—(c)	1.7.1994
	amended by 46/1993 s 14(a)—(c)	3.4.1995
	amended by 41/2005 Sch 2	15.8.2005
s 67(2)	substituted by 46/1993 s 14(d)	3.4.1995
s 67(3)	substituted by 50/1994 s 23(d)	1.7.1994
s 67(4)	amended by 50/1994 s 23(e)	1.7.1994
s 67(5)	amended by 50/1994 s 23(f)	1.7.1994
s 67A	inserted by 24/1989 s 9	1.7.1990
s 67A(3)	amended by 50/1994 s 24(a)	1.7.1994
	amended by 41/2005 s 28(1)	15.8.2005
s 67A(5)	substituted by 51/1993 s 3	1.7.1993
	amended by 50/1994 s 24(b)	1.7.1994
	amended by 41/2005 s 28(2)	15.8.2005
s 67A(6)	substituted by 51/1993 s 3	1.7.1993
	amended by 50/1994 s 24(c)	1.7.1994
	amended by 41/2005 s 28(3)	15.8.2005
s 67A(7)	substituted by 51/1993 s 3	1.7.1993
	substituted by 50/1994 s 24(d)	1.7.1994
	amended by 41/2005 s 28(4)	15.8.2005
s 67A(8)	substituted by 51/1993 s 3	1.7.1993
	substituted by 50/1994 s 24(d)	1.7.1994
	amended by 41/2005 s 28(5)	15.8.2005
s 67A(8a)	<i>inserted by 51/1993 s 3</i>	<i>1.7.1993</i>
	<i>deleted by 50/1994 s 24(d)</i>	<i>1.7.1994</i>
s 67A(8b)	inserted by 51/1993 s 3	1.7.1993
s 67A(8c)	inserted by 51/1993 s 3	1.7.1993
	amended by 50/1994 s 24(e)	1.7.1994
	amended by 41/2005 s 28(6)	15.8.2005
s 67A(8d)	inserted by 51/1993 s 3	1.7.1993
	amended by 50/1994 s 24(f)	1.7.1994
	amended by 41/2005 s 28(7)	15.8.2005
s 67A(8e)	<i>inserted by 51/1993 s 3</i>	<i>1.7.1993</i>
	<i>deleted by 50/1994 s 24(g)</i>	<i>1.7.1994</i>

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s 67A(9)	substituted by 50/1994 s 24(h)	1.7.1994
	amended by 41/2005 s 28(8), (9)	15.8.2005
s 67A(10)	amended by 86/2000 s 7 (Sch)	1.1.2001
s 67A(11)	<i>amended by 1/1993 s 60</i>	<i>1.7.1993</i>
	<i>substituted by 50/1994 s 24(i)</i>	<i>1.7.1994</i>
	<i>deleted by 41/2005 s 28(10)</i>	<i>15.8.2005</i>
ss 67B and 67C	inserted by 41/2005 s 29	15.8.2005
s 68	amended by 50/1994 s 25	1.7.1994
	amended by 41/2005 Sch 2	15.8.2005
s 69		
s 69(3)	amended by 1/1993 s 61(a)	1.7.1993
	amended by 41/2005 Sch 2	15.8.2005
s 69(4)	amended by 1/1993 s 61(b)	1.7.1993
s 69(7)	amended by 41/2005 Sch 2	15.8.2005
s 69(8)	amended by 17/2006 s 176	4.9.2006
s 69(8a)	inserted by 24/1989 s 10	22.6.1989
	amended by 50/1994 s 26(a)	1.7.1994
	amended by 41/2005 s 30(1)	15.8.2005
s 69(8b)	inserted by 24/1989 s 10	22.6.1989
	substituted by 50/1994 s 26(b)	1.7.1994
	substituted by 41/2005 s 30(2)	15.8.2005
s 69(8c)	<i>inserted by 24/1989 s 10</i>	<i>22.6.1989</i>
	<i>deleted by 50/1994 s 26(b)</i>	<i>1.7.1994</i>
s 69(9)	amended by 50/1994 s 26(c)	1.7.1994
s 69(10)	amended by 41/2005 Sch 2	15.8.2005
s 69(11)	amended by 1/1993 s 61(c)	1.7.1993
ss 70 and 71	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>24.11.2003</i>
Sch 1		
cll 3A and 3B	inserted by 24/1989 s 11	1.7.1990
cl 4	amended by 1/1993 s 62	1.7.1993
cl 8	amended by 46/1993 s 15(a)	3.4.1995
cl 21	amended by 46/1993 s 15(b)	3.4.1995
cl 33	inserted by 34/1996 s 4 (Sch cl 26)	3.2.1997
Sch 2	amended by 1/1993 s 63	1.7.1993
	amended by 50/1994 s 27	1.7.1994
	substituted by 46/1993 s 16	3.4.1995
Sch 3	omitted under <i>Legislation Revision and Publication Act 2002</i>	24.11.2003
	inserted by 41/2005 s 31	15.8.2005

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## **Transitional etc provisions associated with Act or amendments**

### ***Occupational Health, Safety and Welfare Act Amendment Act 1989***

#### **12—Transitional provisions**

- (1) The offices of all members of the Commission become vacant on the commencement of this Act.
- (2) The person who was, immediately before the commencement of this Act, the full-time member of the Commission is entitled to be appointed to the office of Chief Executive Officer of the Commission—
  - (a) for a term equal to the balance of the term for which he or she was appointed as full-time member of the Commission; and
  - (b) on terms and conditions equivalent to the terms and conditions of employment that applied to him or her as full-time member of the Commission.
- (3) The person who was, immediately before the commencement of this Act, the deputy to the full-time member of the Commission is entitled to be appointed to the office of Deputy Chief Executive Officer of the Commission (on the same terms and conditions of employment that applied to him or her as deputy to the full-time member of the Commission).

### ***Statutes Amendment (Chief Inspector) Act 1993***

#### **65—Existing appointments**

This Act does not affect the appointment of any person as an inspector before the commencement of this Act (other than as a Chief Inspector).

### ***Occupational Health, Safety and Welfare (Plant) Amendment Act 1993***

#### **19—Transitional provisions**

The Governor may, by regulation, make such transitional provisions as appear to the Governor to be necessary or expedient on account of the enactment of this Act.

### ***Occupational Health, Safety and Welfare (Administration) Amendment Act 1994***

#### **28—Transitional provisions**

The Governor may, by regulation, make such saving or transitional provisions as appear to the Governor to be necessary or expedient on account of the enactment of this Act.

### ***Statutes Amendment and Repeal (Common Expiation Scheme) Act 1996***

#### **5—Transitional provision**

An Act repealed or amended by this Act will continue to apply (as in force immediately prior to the repeal or amendment coming into operation) to an expiation notice issued under the repealed or amended Act.

***Occupational Health, Safety and Welfare (SafeWork SA) Amendment Act 2005,  
Sch 1***

**8—Staff**

- (1) The Minister may, by notice in the Gazette, transfer a person who is a member of the staff of WorkCover immediately before the commencement of this subclause to—
  - (a) the Department; or
  - (b) another administrative unit in the Public Service of the State.
- (2) The Minister must obtain the concurrence of the board of management of WorkCover before he or she may act under subclause (1).
- (3) The conditions of employment that will apply to a person on his or her transfer under subclause (1) will be determined by the Commissioner for Public Employment after consultation with—
  - (a) the Chief Executive of the Department and, if a person is being transferred to another administrative unit under subclause (1)(b), the Chief Executive of that other administrative unit; and
  - (b) any registered association that represents the interests of any person who is being transferred; and
  - (c) WorkCover.
- (4) Despite subclause (3), a transfer under subclause (1) will occur without prejudice to any continuity of service of a person and without affecting any accrued right to leave.

**9—Property**

- (1) The Governor may, by proclamation made on the recommendation of the Minister, vest an asset, right or liability of WorkCover in—
  - (a) the Crown; or
  - (b) the Minister.
- (2) The Governor may, by proclamation made on the recommendation of the Minister, transfer a monetary amount from WorkCover to the Department on account of the arrangements or functions that are to be established or assumed by the Advisory Committee or the Department after the enactment of this Act.
- (3) The Minister must obtain the concurrence of the board of management of WorkCover before he or she may make a recommendation under subclause (1) or (2).
- (4) Any money transferred from WorkCover under subclause (2) will be paid from the Compensation Fund (without further authorisation under the *Workers Rehabilitation and Compensation Act 1986*).

**10—Review of conciliation and mediation scheme**

- (1) The Minister to whom the administration of the principal Act is committed must cause a review to be undertaken in relation to the operation of section 55A of the principal Act after that section has been in operation for a period of 12 months.

- (2) The results of the review must be embodied in a written report and incorporated into the Department's annual report for the financial year during which the review is completed.

## 11—Training

- (1) The period within which a person must attend a course of training under section 61(2a) of the principal Act (as enacted by this Act) if the person is appointed as a responsible officer within the first 12 months after the commencement of this clause will be extended from 3 months to 12 months after his or her appointment.
- (2) A person who is a responsible officer under section 61 of the principal Act on the commencement of this clause must attend a course of training recognised or approved by the Advisory Committee for the purposes of subsection (2a) of that section within 3 years after the commencement of this clause.
- (3) However—
- (a) the requirement for a person to attend a course of training under subclause (2) lapses if the person ceases to be a responsible officer for the relevant body corporate (but this paragraph does not derogate from the operation of section 61(2a) of the principal Act); and
  - (b) a person is not required to attend a course of training under subclause (2) if he or she has, before the commencement of this clause, attended a course of training recognised by the Advisory Committee for the purposes of this provision.
- (4) A person who fails to comply with subclause (2) will be guilty of an offence and liable to the same penalty as the penalty that applies to a failure to comply with section 61(2a) of the principal Act.

## 12—Committee membership

The persons holding office as members of the Mining and Quarrying Occupational Health and Safety Committee immediately before the commencement of this clause may continue to hold office after the commencement of this clause.

## 13—Regulations

The Governor may, by regulation, make other provisions of a saving or transitional nature consequent on the enactment of this Act.

## 14—Interpretation

In this Part—

*Advisory Committee* means the SafeWork SA Advisory Committee;

*Compensation Fund* means the Compensation Fund under Part 5 of the *Workers Rehabilitation and Compensation Act 1986*;

*Department* means the administrative unit of the Minister to whom the administration of the principal Act is committed;

*principal Act* means the *Occupational Health, Safety and Welfare Act 1986*;

*registered association* has the same meaning as in the *Occupational Health, Safety and Welfare Act 1986*;

*WorkCover* means the WorkCover Corporation of South Australia.

## Historical versions

Reprint No 1—4.2.1991

Reprint No 2—1.7.1993

Reprint No 3—1.7.1994

Reprint No 4—3.4.1995

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