

Queensland



WORKPLACE HEALTH AND SAFETY ACT 1989

**Reprinted as in force on 9 December 1992
(includes amendments up to Act No. 68 of 1992)**

Reprint No. 2

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Information about this reprint

This Act is reprinted as at 9 December 1992. As required by section 5 of the *Reprints Act 1992*, it—

- shows the law as amended by all amendments that commenced before that day; and
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind.

As required by section 6 of the *Reprints Act 1992*, the reprint includes, in a suitable place, a reference to the law by which each amendment was made—see List of legislation and List of annotations in Endnotes.

The opportunity has also been taken, under section 7 of the *Reprints Act 1992*, to do the following—

- express gender specific provisions in a way consistent with current legislative drafting practice as permitted by section 24 of that Act;
- use different spelling consistent with current legislative drafting practice, as permitted by section 26(2) of that Act;
- use expressions consistent with current legislative drafting practice as permitted by section 29 of that Act;
- omit provisions that are no longer required as permitted by section 39 of that Act.

Also see Endnotes for—

- **details about when provisions commenced; and**
- **any provisions that have not commenced and are not incorporated in the reprint.**

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WORKPLACE HEALTH AND SAFETY ACT 1989

[as amended by all amendments that commenced before 9 December 1992²]

An Act to consolidate and amend the laws relating to securing the health and safety of persons performing work, protecting persons, other than employees, and members of the public from danger from such work, protecting persons from risks to health and safety from certain plant, and for related purposes

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Workplace Health and Safety Act 1989*³⁻⁵.

Commencement

2.(1) Section 1 and this section shall commence on the day on which this Act is assented to for and on behalf of Her Majesty.

(2) Except as is provided by subsection (1), this Act or the provisions of this Act specified in the proclamation shall commence on a day or days appointed by proclamation for the commencement of this Act or, as the case may be, those provisions.

Repeals and savings

3.(1) The Acts in Schedule 1 are repealed to the extent specified in that schedule.

(2) The Act specified in the first column of Schedule 2 is amended as specified in the second column of that schedule opposite the reference to that

Act, and the Act as so amended may be cited as specified in the third column of that schedule in relation to that Act.

(3) The provisions repealed by subsections (1) and (2) and under Part 8 are referred to in this Act as the repealed provisions.

(4) A person who at the date of commencement of this section—

- (a) holds the appointment of inspector for the purposes of any of the repealed provisions shall on and from that date hold the appointment of inspector for the purposes of this Act until the person properly vacates it or is properly removed from it;
- (b) holds any other appointment for the purposes of any of the repealed provisions shall on and from that date hold that or a corresponding appointment for the purposes of this Act until the person properly vacates it or is properly removed from it.

(5) Without limiting the operation of the *Acts Interpretation Act 1954*, unless the contrary intention appears in this Act, every proclamation, order in council, rule, regulation, registration, order, notice, permit, certificate, approval, request, requirement, mark, agreement or modification of this Act, or other act of authority made, issued, given or done under the repealed provisions and in force immediately before the commencement of this section shall continue in force for the purposes of this Act as if it had been made, issued, given or done under this Act until it expires by effluxion of time or is repealed, amended or otherwise modified, revoked, cancelled or suspended under this Act, but shall be read and construed subject to this Act.

(6) For the purposes of subsection (5), every registration of a factory or a shop under the *Factories and Shops Act 1960* shall continue in force as if it were a registration of a workplace under this Act until it expires by effluxion of time or is modified, revoked, cancelled or suspended under this Act, but shall be read and construed subject to this Act.

Application of Act

4.(1) This Act shall not apply to or in relation to—

- (a) a mine to which the *Mines Regulation Act 1964* applies;
- (b) a mine to which the *Coal Mining Act 1925* applies;

- (c) land that is used for the obtaining or the mining or the conveying of petroleum under the *Petroleum Act 1923*.

(2) This Act shall not derogate from the provisions of the *Radioactive Substances Act 1958*, the *Queensland Marine Act 1958*, the *Explosives Act 1952*, the *Traffic Act 1949*, the *Motor Vehicles Safety Act 1980* or the *Public Safety Preservation Act 1986* and where there is any conflict between the provisions of this Act and the provisions of those Acts, the provisions of those Acts shall prevail, to the extent of that inconsistency.

Extent to which Act binds the Crown

5. Subject to section 4, this Act binds the Crown not only in right of Queensland but also, so far as the legislative power of Parliament extends, the Crown in all its other capacities, except to the extent that this Act relates to, or could be construed as requiring, the provision, alteration, replacement or dealing with amenities in premises that existed before the commencement of this section.

Interpretation

6.(1) In this Act—

“**airconditioning unit**” means a unit of plant which provides airconditioning and which either—

- (a) incorporates an evaporative condenser or cooling tower; or
- (b) comprises 1 or more compressors and the power rating required for operation of the airconditioning unit is 50 kw or greater;

“**amenities**”, in relation to a workplace, means the air space, ceilings, floors, floor area, roofs, walls, lighting, dining rooms, dressing rooms, sanitary and washing facilities;

“**amusement device**” means a device—

- (a) used or designed to be used for amusement, games, recreation, sightseeing or entertainment, and on which persons may be carried, raised, lowered or supported by any part of the device, including any car, carriage, platform, cage, boat, plank, chair, seat or thing whilst such part, car, carriage, platform, cage, boat, plank, chair, seat or thing is in motion; and

(b) used for commercial purposes;

“building or structure” includes any erection, edifice, wall, chimney, fence, bridge, dam, reservoir, wharf, jetty, earth works, reclamation, ship, floating structure, plant, tunnel, trench, excavation and shaft;

“certificate” means any certificate granted under this Act and in force at the material time;

“council” means the Workplace Health and Safety Council constituted under this Act;

“Crown”, without limiting the generality of that term, includes any commission, board, instrumentality, corporation, or person representing the Crown and any person or body specified by the Governor in Council, by Gazette notice, as representing the Crown for the purposes of this Act only;

“dangerous occurrence” includes—

- (a) damage to any boiler, pressure vessel or refrigerating plant which damage endangers the health and safety or health or safety of any person in the vicinity of it; and
- (b) damage to any load-bearing member or part of, or failure to any brake, steering or limiting device or other control device of, any crane, hoist, conveyor, lift, escalator, plant, scaffolding, gear or amusement device; and
- (c) an uncontrolled explosion, fire, escape of gas or steam; and
- (d) an occurrence (including those involving any dangerous substance) involving imminent risk of explosion, fire, death, serious bodily injury or work related illness to any person or serious damage to any property;

“Director” means the Director of the Division of Workplace Health and Safety appointed or taken to be appointed under and for the purpose of this Act and includes any person for the time being performing the duties of the Director;

“domestic premises” means premises occupied as a private dwelling house, and includes such premises where the occupants are temporarily absent from the premises;

“duly qualified” means possessing the required qualifications under the provisions of this Act;

“employee” means a person who performs work for an employer;

“employer” includes a person who, in the course of the person’s business, engages the services of another person in the performance of any work and also includes a self-employed person;

“escalator” means a power driven inclined continuous stairway used for raising or lowering passengers, and includes a moving walkway;

“function” includes responsibility and power;

“inspector” means the Director of the Division of Workplace Health and Safety and any person who holds the appointment of workplace health and safety inspector for the purposes of this Act, and includes any person for the time being performing the whole or any part of the duties of a workplace health and safety inspector;

“lift” means any machinery having a platform or cage the direction or movement of which is restricted by a guide or guides and used or designed for use for the purpose of raising or lowering persons, goods or materials, and includes any and all machinery, supports, and enclosures, and any and all equipment of them whether detachable or not, used or designed for use for operating a lift;

“notifiable project” means a project prescribed to be a notifiable project, or a project belonging to a class of projects prescribed to be notifiable projects, under this Act;

“occupier”, with respect to a workplace or other place, includes any person in actual occupation of that place whether employing persons or not, and any agent, manager, supervisor, or other person acting or apparently acting in the general management or control of the business carried on in that place;

“owner” means—

- (a) in relation to a project—the person or persons whose property it is whether jointly or severally or for whose direct benefit the project exists or will exist upon completion; or
- (b) in relation to a workplace or any other premises (other than a project)—

- (i) the person or persons whose property it is (whether jointly or severally); or
- (ii) a mortgagee in possession; or
- (iii) a lessee; or
- (c) in relation to any plant or substance the person whose property it is or, where some other person has control, charge or management of it—that other person, and any lessee, mortgagee, hirer or borrower of the plant or substance;

“personal protective equipment” includes any clothing, equipment and substance designed—

- (a) to be worn by a person; and
- (b) to protect the person from risks of injury or disease;

“plant” includes—

- (a) machinery, equipment, appliance, pressure vessel, implement and tool; and
- (b) personal protective equipment; and
- (c) plant specified in Schedule 3; and
- (d) a component of plant and a fitting, connection, accessory or adjunct to plant;

“practicable”, means practicable having regard to—

- (a) the nature of the employment or, as the case may be, the particular aspect of the employment concerned; and
- (b) the severity of any potential injury or harm to health or safety that may be involved, and the degree of risk that exists in relation to such potential injury or harm; and
- (c) the state of knowledge about the injury or harm to health or safety that may be involved, about the risk of that injury or harm to health or safety happening and about any ways of preventing, removing or mitigating that injury, harm or risk; and
- (d) the availability and suitability of ways to prevent, remove or mitigate that injury or harm to health or safety or risk; and
- (e) whether the cost of preventing, removing or mitigating that injury

or harm to health or safety or that risk is prohibitive in the circumstances;

“premises” include—

- (a) land (whether or not improved or enclosed); and
- (b) a building (whether completely or partly erected or constructed or in the course of being erected or constructed); and
- (c) a part of a building; and
- (d) a road, street or bridge or another structure on, in or over or under a road or street; and
- (e) a structure or area (whether or not enclosed and whether above or below ground); and
- (f) a vehicle, vessel or aircraft; and
- (g) an installation on land, on the bed of any waters or floating on any waters; and
- (h) a tent or removable structure; and
- (i) any other place (whether on or under any waters or on the bed of any waters and whether the place is in a natural or undeveloped state);

“principal contractor”, used in relation to a project, means the person who, under section 18, is the principal contractor in respect of a project;

“project” means, subject to section 17(2)—

- (a) a workplace (other than a ship or floating structure unless the ship or floating structure is in a dock or at a wharf or other place outside of the tidal influence) where any of the following classes of work are carried out—the construction, digging, filling, erection, installation, alteration, repair, maintenance, cleaning, painting, renewal, removal, dismantling or demolition of, or addition to, a building or structure; or
- (b) any work, or any work of a kind or class, designated by the Director, under the provisions of this Act, to be a project;

“rural industry” means an industry in which persons are engaged in work, whether as a servant or otherwise—

- (a) upon any farm, orchard, vineyard, agricultural holding or pastoral holding in connection with dairying, poultry farming, bee farming, or the sowing, raising or harvesting of grain, fodder, sugar cane, fruit, cotton, or any other crop or farm produce, whether grown for food or not, or the management, rearing or grazing of horses, cattle, sheep or other livestock, or the shearing or crutching of sheep, or the classing, scouring, sorting or pressing of wool upon any farm or station or at any other farm or station work; or
- (b) in flower or vegetable market gardens; or
- (c) at clearing, fencing, trenching, draining or otherwise preparing land for any purpose specified in this definition;

“seizure notice” means a seizure notice issued under the provisions of this Act;

“self-employed person” means a person who works for gain or reward otherwise than under a contract of employment or apprenticeship, whether or not that person employs 1 or more other persons;

“serious bodily injury” means an injury that causes death or disables a person to the extent that as a consequence of that injury the person is subject to a period of admission to hospital as an in-patient;

“substance” means any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour;

“work-related illness” means—

- (a) a disease that is contracted by an employee in the course of employment and to which the employment was a contributing factor; or
- (b) the recurrence, aggravation, acceleration, exacerbation or deterioration in an employee of any existing disease in the course of employment, where the employment was a contributing factor to that recurrence, aggravation, acceleration, exacerbation or deterioration;

“work injury” means—

- (a) an injury that arises out of or in the course of employment and that requires first aid or medical treatment; or

- (b) the recurrence, aggravation, acceleration, exacerbation or deterioration in an employee of any existing injury in the course of employment, which employment was a contributing factor to that recurrence, aggravation, acceleration, exacerbation or deterioration, that requires first aid or medical treatment;

“workplace” means any premises where work is or is to be or is likely to be performed by employees or self-employed persons and includes any area within the immediate vicinity of such premises where gear, plant, equipment or materials to be used in that work are kept, and any building or structure, bridge, wharf, road or way on or within such premises or in the immediate vicinity of such premises.

(4) For the purposes of this Act—

- (a) an employee is at work throughout the time when the employee is at the employee’s workplace or at or in any premises by the direction of his or her employer, but not otherwise;
- (b) a self-employed person is at work throughout such time as the person devotes to work as a self-employed person.

Objects of the Act

7. The objects of this Act are—

- (a) to promote and secure the health and safety of persons performing work; and
- (b) to protect persons performing work from risks to health and to safety; and
- (c) to protect persons other than employees, and members of the public, from danger to health and safety in respect of any undertaking conducted, work performed or substance, manufactured, stored, kept, supplied, used or produced at or from that workplace; and
- (d) to assist in securing safe and hygienic work environments; and
- (e) to provide for a system of registration of all or any existing workplaces and for the approval before the construction of, or the carrying out of any structural alterations or additions to, any building intended for use or used as a workplace; and

- (f) to provide for a work environment, for persons performing work, that is adapted to their physiological and psychological needs; and
- (g) to reduce, eliminate and control risks to the health and safety of persons performing work; and
- (h) to foster cooperation and consultation between employers and employees and associations representing employers and employees and to provide for the participation of those persons and associations in the formulation and implementation of health and safety standards to current levels of technical knowledge and development; and
- (i) to provide for formulation of policies and for coordination of the administration of laws relating to workplace health and safety; and
- (j) to promote education and community awareness on matters relating to workplace health and safety; and
- (k) to protect and to promote and secure the health and safety of persons operating or using any plant of a kind specified in the Schedule 3 and any person who may be affected by such operation or use.

Act not to apply in certain circumstances

8.(1) The Governor in Council may, by regulation, declare that all or any of the provisions of this Act do not apply in relation to any of the following matters—

- (a) a workplace or part of a workplace;
- (b) premises or part of premises;
- (c) plant;
- (d) a substance;
- (e) a method of work.

(2) The declaration may be made subject to a condition specified in the regulation.

(3) If—

- (a) the declaration is made subject to a condition; and

- (b) the condition is not complied with in relation to a particular matter;

the declaration ceases to have effect in relation to the matter on and from the day of noncompliance.

PART 2—PROVISIONS RELATING TO WORKPLACE HEALTH AND SAFETY

Division 1—General duties of employers, manufacturers etc.

Employers to ensure health and safety of their employees

9.(1) An employer who fails to ensure the health and safety at work of all the employer's employees, except where it is not practicable for the employer to do so, commits an offence against this Act.

(2) Without in any way limiting the generality of subsection (1), any 1 or more of the following shall represent particulars of the offence created by that subsection—

- (a) particulars of failure to provide and maintain plant and systems of work that are so far as is practicable safe and without risks to the health and safety of any person;
- (b) particulars of failure to make arrangements for ensuring so far as is practicable safety and absence of risks to health and safety in connection with the use, handling, storage and transport of plant and substances;
- (c) particulars of failure to maintain so far as is practicable any workplace under the control and management of the employer in a condition that is safe and without risks to the health and safety of any person;
- (d) particulars of failure to provide so far as is practicable adequate facilities for the health and safety of employees at any workplace under the control and management of the employer;

- (e) particulars of failure to provide so far as is practicable such information, instruction, training and supervision to such persons as are necessary to enable the employees to perform their work in a manner that is safe and without risks to their health and safety;
- (f) particulars of failure to provide personal protective equipment where it is not practicable to control hazards at the workplace by other means.

(3) No particular referred to in subsection (2) shall constitute a separate offence.

Employers and self-employed persons to ensure health and safety of themselves and persons other than employees

10.(1) An employer who fails to conduct his or her undertaking in such a manner as to ensure that his or her own health and safety and the health and safety of persons not in the employer's employment and members of the public who may be affected are not exposed to risks arising from the conduct of the employer's undertaking, except where it is not practicable for the employer to do so, commits an offence against this Act.

(2) A self-employed person who fails to ensure that persons not in his or her employment and members of the public are not exposed to risks to their health or safety because of the work in which the self-employed person or any of his or her employees is engaged, except where it is not practicable for the self-employed person so to do, commits an offence against this Act.

Persons in control of workplaces etc. used by non-employees to ensure health and safety

11.(1) A person who has, to any extent, control of—

- (a) premises (not being domestic premises) that have been made available to persons (not being the person's employees) as a place of work, or the means of access to, or egress from, the premises; or
- (b) any plant or substance, in any premises (not being domestic premises), that has been provided for the use or operation of persons at a workplace (not being the person's employees),

and who fails to ensure that the premises, the means of access to, or egress from, the premises or the plant or substance, as the case may be, are or is safe and without risks to health, except where it is not practicable for the person to do so, commits an offence against this Act.

(2) Where a person has, because of any contract or lease, an obligation of any extent in relation to—

- (a) the maintenance or repair of any premises referred to in subsection (1)(a) or any means of access to, or egress from, the premises; or
- (b) the safety of, or the absence of risks to health arising from, any plant or substance referred to in subsection (1)(b);

that person shall be treated, for the purposes of subsection (1), as being a person who has control of the thing to which the person's obligation extends.

(3) A reference in this section to a person having control of anything is a reference to a person having control of the thing in connection with the carrying on by the person of a trade, business or other undertaking (whether for profit or not).

(4) In this section—

“**premises**” does not include premises of a kind mentioned in paragraph (i) of the definition “**premises**” in section 6(1) unless premises of that kind are prescribed by regulation for the purposes of this section.

Duties of manufacturers etc.

12.(1) A person who designs, manufactures, imports or supplies any plant for use at a workplace who—

- (a) fails to ensure that the plant is so designed and constructed as to be safe and without risks to health when used properly, except where it is not practicable for the person to do so; or
- (b) fails to carry out or arrange for the carrying out of such testing and examination as may be necessary for the performance of the duty imposed by paragraph (a); or
- (c) fails to take such action as is necessary to ensure that there is available in connection with the use of the plant at the workplace

adequate information about the use for which it is designed and has been tested, and about any conditions necessary to ensure that when put to that use it will be without risks to the health and safety of any person; or

- (d) fails to take such action as is necessary or required by the Director to remove from a workplace, plant that the Director considers, on reasonable grounds, to be unsafe and a risk to the health and safety of any person;

commits an offence against this Act.

(2) A person who erects or installs any plant for use at a workplace and who fails to ensure that nothing about the way in which it is erected or installed makes it unsafe or a risk to health or safety of any person when used properly, except where it is not practicable for the person to do so, commits an offence against this Act.

(3) A person who manufactures, imports, controls storage of or supplies any substance for use at a workplace who—

- (a) fails to ensure that the substance is safe and without risks to the health or safety of any person when used properly, except where it is not practicable for the person to do so; or
- (b) fails to carry out or arrange for the carrying out of such testing and examination as may be necessary for the performance of the duty imposed by paragraph (a); or
- (c) fails to take such action as is necessary to ensure that there is available in connection with the uses of the substance at the workplace adequate information on the identification, health hazards, precautions for use, and safe handling of the substance and the results of any relevant tests that have been carried out on or in connection with the substance; or
- (d) fails to take such action as is necessary or required by the Director to remove from the workplace a substance that is shown to be unsafe and a risk to the health or safety of any person or for which adequate information required under paragraph (c) is not available;

commits an offence against this Act.

(4) For the purposes of this section, any plant or substance is not to be

regarded as properly used where it is used without regard to any relevant information or advice that is available relating to its use.

Duties of employees

13.(1) An employee who, while at his or her workplace, wilfully acts in a manner that endangers the health or safety of himself or herself or any other person, commits an offence against this Act.

(2) An employee who—

- (a) fails to comply, so far as is practicable, with instructions given by his or her employer for the health or safety of that employee or for the health or safety of other persons; or
- (b) fails to use, so far as is practicable, such protective clothing and equipment of the kind referred to in section 9(2)(f), as is provided, or provided for, by his or her employer, in a way in which he or she has been properly instructed to use it;

commits an offence against this Act.

(3) An employee who—

- (a) wilfully or recklessly interferes with or misuses anything provided in the interests of health or safety under any provision of this Act; or
- (b) wilfully places at risk the health or safety of any person at the workplace;

commits an offence against this Act.

Duties of persons other than an employer or employee

14. A person other than an employer or an employee who, at a workplace—

- (a) acts in a manner that endangers the health or safety of any other person at the workplace; or
- (b) fails to carry out a safety direction that is given to the person by the principal contractor or employer, as the case may be, for the workplace concerned; or

- (c) wilfully or recklessly interferes with anything provided in the interests of health or safety at the workplace;

commits an offence against this Act.

Division 2—Provisions concerning projects

Effect of provisions of Division

15. The duties cast on a person as an owner or a principal contractor under the provisions of this Division are in addition to and not in substitution for duties cast on that person in any capacity under any other provisions of this Act.

Director may designate projects

16.(1) If the Director is satisfied that work carried on, or proposed to be carried on, at a workplace is, or is likely to be, dangerous for—

- (a) employees or other persons involved in the work; or
- (b) other persons in or near the workplace;

the Director may, by notice, designate the workplace to be a project for the purposes of this Act.

(2) A notice under subsection (1) is subordinate legislation.

Duties of owner

17.(1) The owner of the project, if required by the Director, shall—

- (a) give notice in writing to the Director of the boundaries of the area of the project (described in a manner approved by the Director); and
- (b) where the owner has appointed a person as principal contractor of the project under section 18(1)—lodge with the Director the instrument of appointment.

(2) Where the area notified by the owner under this section overlaps any other area so notified in respect of a project, the project shall consist of the

work performed in the combined area.

Principal contractor in respect of project

18.(1) For the purposes of this Act, the principal contractor in respect of a project shall, subject to subsections (2) and (3), be—

- (a) a person appointed by the owner by notice, in a form approved by the Director by Industrial Gazette notice, to be principal contractor; and
- (b) where no appointment is made under paragraph (a)—the owner;

of the project.

(2) If a person appointed as principal contractor in respect of a project ceases to perform the functions of principal contractor, the Director may approve the appointment by the owner, of another person as principal contractor and, until such an appointment is approved, the owner of the project shall be taken to be the principal contractor from the time the person previously appointed as principal contractor ceases to perform those functions.

(3) Where the owner of a project is, under subsection (1)(b), also the principal contractor of the project, the Director may approve the appointment by the owner of another person as principal contractor.

Director may prescribe notifiable projects

19.(1) The Director may, by notice, prescribe any project or projects of a particular class to be a notifiable project or notifiable projects for the purposes of this Act.

(2) In the exercise of the power conferred on the Director by this section, it shall be competent to the Director to prescribe as notifiable projects all projects involving a building or structure other than such project or classes of project as are specified by the Director.

(3) A notice under subsection (1) is subordinate legislation.

Notifiable project to be notified before commencement

20. A principal contractor shall not commence nor cause nor suffer to be commenced any project that is a notifiable project unless the principal contractor has first notified the Director, as prescribed, of the nature of the project and of the time when that project is to be commenced.

Mode of notification

21. A notification given in relation to a notifiable project shall be in the prescribed form, shall be given to the Director at least 24 hours before the time when it is intended to commence the project and shall be accompanied by the prescribed fee.

Contravention of s. 20 not an offence in certain circumstances

22. A person shall be taken not to have committed an offence against this Act because of a contravention of section 20 if the person shows—

- (a) that the notifiable project was commenced to meet an emergency created by explosion, collision, fire, rain, flood, lightning, wind, earthquake or dangerous occurrence; and
- (b) that it was impracticable in the circumstances in which the work was commenced to give the notification as prescribed; and
- (c) that the notification was given in the prescribed form and the prescribed fee paid in the prescribed manner as soon as practicable after the work was commenced.

Duties of principal contractor

23. In respect of a project on which he or she is engaged, a principal contractor who—

- (a) fails to ensure, except where it is not practicable for the principal contractor to do so, that every employer and every employee engaged in an occupation at a workplace complies with or, as the case may be, does not contravene the provisions of this Act; or
- (b) fails to ensure the health and safety of members of the public on or near the workplace; or

- (c) fails to provide such other safeguards and take such other safety measures as are prescribed;

commits an offence against this Act.

Division 3—Provisions to protect persons from risks from specified plant

General duties of owner of specified plant

24. A person who is the owner of any plant of a kind specified in Schedule 3 who, except where it is not practicable for the person to do so, fails to maintain that plant in such a condition that it is without risks to the health or safety of persons who may be affected by the risks, commits an offence against this Act.

Duties of manufacturers etc. of specified plant

25.(1) A person who designs, manufactures, imports or supplies, for use by any person at any premises, any plant of a kind specified in the Schedule 3 who—

- (a) except where it is not practicable for the person to do so, fails to ensure that the plant is so designed and constructed as to be safe and without risks to the health or safety of any person when used properly; or
- (b) fails to carry out or arrange for the carrying out of such testing and examination as may be necessary for the performance of the duty imposed by paragraph (a); or
- (c) fails to take such action as is necessary to ensure that there is available in connection with the use of the plant at the premises of use, adequate information about the use for which it is designed and has been tested, and about any conditions necessary to ensure that when put to that use it will be without risks to the health or safety of any person; or
- (d) fails to take such action as is necessary or required by the Director to remove from the premises of use any plant that the Director considers, on reasonable grounds, to be unsafe and a risk to the

health or safety of any person;
commits an offence against this Act.

(2) A person who erects or installs any plant of a kind specified in Schedule 3 and who, except where it is not practicable for the person to do so, fails to ensure that nothing in the way in which it is erected or installed makes it unsafe or a risk to the health or safety of any person when used properly, commits an offence against this Act.

(3) For the purposes of this section, any plant is not to be regarded as properly used where it is used without regard to any relevant information or advice that is available relating to its use.

Duty under this Division is additional to other duties

26. A duty imposed on a person under this Division is in addition to, and not in substitution for, a duty imposed on the person under another provision of this Act.

PART 3—GENERAL PROVISIONS

Record of injuries, illnesses and occurrences to be kept

27. Every employer and every principal contractor to whom this Act applies—

- (a) shall keep a record in English, in the prescribed form, showing the prescribed particulars in respect of every work injury, work-related illness or dangerous occurrence that happens at a workplace at which work is being performed for the person; and
- (b) shall, not later than 3 clear days after any work injury, work-related illness or dangerous occurrence that happens at that workplace, insert in that record the prescribed particulars of that work injury, work-related illness or dangerous occurrence; and
- (c) shall make that record available for inspection by an inspector when requested to do so.

Notification of serious bodily injury, work-related illness or dangerous occurrence to be given

28.(1) Every employer to whom this Act applies shall give notice to the Director in the prescribed form of every serious bodily injury, work-related illness, or dangerous occurrence that happens at a workplace, other than a project, at which work is being performed for that employer.

(2) Where any serious bodily injury, work-related illness, or dangerous occurrence happens on or in relation to a project, such notice shall be given by the principal contractor of that project.

(3) The notice referred to in subsections (1) and (2) shall be given within 24 hours after the happening of any such serious bodily injury or dangerous occurrence or within 24 hours of becoming aware of a work-related illness.

Immediate notice concerning death

29. As soon as possible after the happening of any serious bodily injury, work-related illness or dangerous occurrence of a kind referred to in section 28 that causes death, the person required under section 28 to give written notice of the occurrence shall in addition give to the Director or to any other inspector by the quickest means of communication available to the person all information concerning the serious bodily injury, work-related illness or, as the case may be, dangerous occurrence then available to the person.

Scene not to be interfered with

30.(1) If—

- (a) a person suffers serious bodily injury or a work-related illness; or
- (b) a dangerous occurrence happens;

of a kind that is required to be notified to the Director under section 28 or 29, a person must not move or otherwise interfere with any plant or other thing involved in the injury, illness or happening without the prior permission of an inspector or, if an inspector is not available, a police officer.

(2) Subsection (1) does not apply if the movement or interference is necessary—

- (a) to save life or relieve suffering; or
- (b) to prevent damage to property or injury to persons.

Offence not to report as prescribed

31. A person who, being required to give any notice under section 28 or 29, fails to do so as prescribed commits an offence against this Act.

Inspector's duty on receipt of notice

32.(1) Upon receipt of a notice under section 28 or 29, the Director or any other inspector nominated by the Director may inquire as he or she considers necessary into the circumstances of the injury, illness, occurrence or death with a view to establishing the cause and, if the Director or inspector so enquires, shall make a written report of his or her findings, which, in the case of an inspector other than the Director shall be made to the Director.

(2) In discharging his or her duty under this section, an inspector may require any person to inform the inspector of what that person knows concerning the circumstances relating to the injury, illness, occurrence or death.

Tribunal to conduct inquiries and to investigate accidents

33.(1) The Minister may from time to time—

- (a) set up an accident and inquiry tribunal charged with the function of investigating, determining and reporting on the cause of any serious bodily injury, work-related illness or dangerous occurrence—
 - (i) that is required by this Division to be notified to the Director; and
 - (ii) that the Minister refers to it; or
- (b) set up an accident and inquiry tribunal charged with the function of inquiring into and reporting on any matter or thing that the Minister refers to it.

(2) In the discharge of its functions an accident and inquiry tribunal shall

enquire into the circumstances and possible causes of the accident, illness or occurrence or, as the case may be, into the circumstances of the matter concerned and shall make its findings in writing to the Minister.

(2A) For the purpose of any such inquiry an accident and inquiry tribunal shall be taken to be a commission of inquiry within the meaning of the *Commissions of Inquiry Act 1950* and the provisions of that Act, other than sections 4, 4A, 10(3), 13, 14(1A), 19(2), 19A, 19B, 19C and 26, shall apply accordingly.

(2B) However, if a provision of that Act is inconsistent with a provision of this Act, the provision of this Act, to the extent of the inconsistency, shall prevail.

(3) For the purposes of applying the provisions of the *Commissions of Inquiry Act 1950*, each member of the tribunal shall be taken to be a commissioner and the chairperson shall be taken to be the chairperson within the meaning of that Act.

(4) There shall be payable to a witness who appears before the tribunal an allowance for expenses being—

- (a) the allowances payable under section 24 of the *Commissions of Inquiry Act 1950*; or
- (b) such other allowances as the chairperson of the tribunal in special circumstances considers reasonable;

whichever is the greater and that allowance shall be paid out of funds appropriated by the Parliament for that purpose.

(5) An accident and inquiry tribunal shall consist of 4 members appointed by the Minister of whom—

- (a) 1 shall be an Industrial Magistrate who shall be chairperson of the tribunal; and
- (b) 1 shall be a person representing employers and principal contractors or employers or principal contractors, as the Minister considers appropriate, in the industry to which the injury, illness, occurrence or inquiry concerned relates; and
- (c) 1 shall be a person representing employees in the industry to which the injury, illness, occurrence or inquiry concerned relates; and

- (d) 1 shall be a person who is, in the opinion of the Minister, a health and safety expert in the industry to which the injury, illness, occurrence or inquiry concerned relates.

Codes of practice

34.(1) For the purpose of providing practical guidance to principal contractors, employers, owners, occupiers, employees or any other persons to whom duties of care may apply under this Act, the Minister may approve any code of practice.

(2) A code of practice may consist of any code, standard, rule, specification or provision relating to workplace health and safety formulated, prepared or adopted by the Director and may apply, incorporate or refer to any document formulated or published by any body or authority as in force at the time the code of practice is approved or as amended, formulated or published from time to time.

(3) The Minister may approve any revision of the whole or any part of a code of practice or revoke the approval of a code of practice.

(4) An approval or revocation of approval under this section must be by notice.

(4A) A notice mentioned in subsection (4) is subordinate legislation.

(5) The Minister shall cause a copy—

- (a) of every approved code of practice; and
- (b) where an approved code of practice has been revised and that revision has been approved—of every approved code of practice as so revised; and
- (c) where an approved code of practice applies, incorporates or refers to any other document—of every such document;

to be made available for inspection by members of the public without charge during normal office hours.

(6) A code of practice or a revised code of practice commences when the relevant approval commences.

(7) A code of practice ceases to have effect when the relevant revocation of approval commences.

(8) A person shall not be liable to any civil or criminal proceedings merely because the person has failed to observe any provision of an approved code of practice.

Use of codes of practice in proceedings

35. Where in any proceedings under this Act it is alleged that a person contravened a provision of this Act in relation to which an approved code of practice was in effect at the time of the alleged contravention—

- (a) the approved code of practice shall be admissible in evidence in those proceedings; and
- (b) if the court is satisfied, in respect of any matter that it is necessary for the prosecution to prove in order to establish the alleged contravention, that—
 - (i) any provision of the approved code of practice is relevant to that matter; and
 - (ii) the person failed at any material time to observe that provision of the approved code of practice;

that matter shall be taken as proved unless the court is satisfied, that in respect of that matter the person complied with that provision of this Act otherwise than by way of observance of that provision of the approved code of practice.

PART 4—COUNCIL

Constitution of Workplace Health and Safety Council

37. There shall be constituted for the purposes of this Act, a council to be called the Workplace Health and Safety Council.

Membership of the Council

38.(1) The Council is to consist of 9 members appointed by the Governor in Council.

- (2)** The persons eligible for membership shall be—
- (a) the following ex officio members of the council—
 - (i) the Director-General of the department of government of Queensland within which this Act is administered who shall be chairperson;
 - (ii) the holder of an office within the Department of Health nominated by the Minister for the time being charged with the administration of that last mentioned department;
 - (iii) the Director, Division of Workplace Health and Safety, in the department of government of Queensland within which this Act is administered;
 - (b) the Governor in Council shall appoint to the council—
 - (i) 2 members nominated by 1 or more associations which are recommended by the Minister as representative of employers; and
 - (ii) 2 members nominated by 1 or more associations which are recommended by the Minister as representative of employees; and
 - (iii) 2 members recommended by the Minister as experts in the field of workplace health and safety.

Chairperson of Council

39.(1) The chairperson shall preside at every meeting of the Council at which the chairperson attends.

(1A) If the chairperson is absent from a meeting, another member of the Council chosen for the purpose by a majority of the members present and voting shall preside.

(2) Except when the regulations disentitle him or her from voting on the matter in issue, the member presiding at a meeting of the Council shall be entitled to a deliberative vote on any matter before the meeting and, in the event of an equal division of votes, shall be entitled to a second or casting vote.

Tenure of office

40.(1) The appointment of a member of the Council shall commence on the date specified in the notification of appointment published in the Industrial Gazette and, except in the case of an appointment to fill a casual vacancy, shall be for a term of 3 years.

(2) A member of the Council shall be eligible for reappointment if the member is qualified to be nominated for reappointment.

Vacation of office

41.(1) The office of a member of the Council shall become vacant if the member—

- (a) dies; or
- (b) becomes bankrupt or otherwise takes advantage of the laws in force for the time being relating to bankruptcy; or
- (c) is absent without prior leave granted by the Council from 3 consecutive ordinary meetings of the Council of which due notice has been given to the member; or
- (d) resigns the member's office by signed writing delivered to the Minister; or
- (e) is convicted, in Queensland, of an indictable offence (whether upon indictment or by way of summary proceeding) or is convicted, elsewhere than in Queensland, of an offence which would be an indictable offence if committed in Queensland, or is convicted of an offence against this Act; or
- (f) is removed from office by the Governor in Council on the grounds of incapacity to perform duties as a member or of conduct which, in the opinion of the Governor in Council, shows the member to be unfit to be a member of the Council.

(2) Attendance of a member of the Council at the time and place appointed for an ordinary meeting of the Council shall be taken to constitute presence at a meeting because a quorum is not present no meeting is then and there actually held, and the names of all persons who so attend shall be entered in the minute book.

(3) A resignation as member of the Council shall be of no effect until

written notice of the resignation is received by the Minister or until the operative date specified in the notice whichever is the later.

Casual vacancies

42. When a vacancy happens in the office of a member of the Council during the term of office of the members then constituting the Council, the Governor in Council may under section 38 appoint another person as a member to hold office for the balance of his or her predecessor's term of office as a member.

Appointment of deputy members

43.(1) If it appears to a member of the Council other than the chairperson that the member will be unable to adequately discharge the member's functions under this Act for any period, the member shall, in writing, inform the Minister of that fact.

(2) Where that member was appointed to the Council under section 38(2)(b)(iii), the Minister may, upon receipt of that information, recommend to the Governor in Council that another person be appointed as a deputy member of the Council until that member is again able to adequately discharge those functions.

(2A) In any other case the Minister may, in writing, call upon the person or body who nominated that member to nominate to it another person for appointment, subject to the recommendation of the Minister, by the Governor in Council as a deputy member of the Council until that member is again able to adequately discharge those functions.

(3) Upon receipt of a recommendation by the Minister under subsection (2) or (2A), the Governor in Council may, by notification in the Industrial Gazette, appoint the person recommended as a deputy member of the Council.

(4) A deputy member for as long as the appointment subsists, shall have and may exercise the functions of the member for whom the deputy member is deputising.

Meetings of Council

44.(1) The Council shall meet as often as is necessary for the due administration of this Act, at such times and places as it thinks fit, and shall conduct its business in the manner prescribed or, in so far as not prescribed, as it determines from time to time.

(2) A quorum at any meeting of the Council shall be 6 members entitled to vote on the business before the meeting who, at a properly convened meeting, shall be competent to transact any business of the Council and may exercise and perform all the functions of the Council.

(3) The decision of a majority of the members at a meeting of the Council at which a quorum is present shall be a decision of the Council.

(4) If a member present at a meeting and entitled to vote abstains from voting, the member shall be taken to have cast a vote for the negative.

(5) A proceeding or decision of the Council shall not be invalidated or made ineffectual merely because—

- (a) the whole number of members had not been appointed at the time; or
- (b) any member was not entitled to take part in the proceeding or decision; or
- (c) there is a defect in the appointment of any member.

Entitlements of members of Council

45.(1) Members of the Workplace Health and Safety Council are to be paid the remuneration and allowances that are approved by the Governor in Council.

(2) Members of the Council shall be entitled to be reimbursed such out-of-pocket expenses necessarily incurred by them in the performance of their duties as such members as are approved by the Minister.

Functions of Workplace Health and Safety Council

46. The functions of the Council are—

- (a) to advise the Minister on any policy matter relating to workplace

health and safety; and

- (b) to enquire into, recommend and promote educational programs on workplace health and safety; and
- (c) to devise, in cooperation with educational authorities and bodies, courses in relation to workplace health and safety and to recommend to the Minister that such courses be integrated into programs in educational institutions; and
- (d) to recommend to the Minister the establishment of public inquiries into any matter relating to workplace health and safety; and
- (e) to recommend to the Minister the formation of appropriate industry workplace health and safety committees and the membership of the committees; and
- (f) to recommend to the Minister any changes to the constitution and membership of industry workplace health and safety committees; and
- (g) to require the appropriate industry workplace health and safety committees to examine any matter relating to workplace health and safety and make a recommendation accordingly; and
- (h) to receive recommendations from industry workplace health and safety committees and submit them to the Minister with appropriate recommendations; and
- (i) to recommend to the Minister that research into any workplace health and safety matter be undertaken or encouraged;

and include any other functions assigned to it by the Minister under this Act.

PART 5—INDUSTRY WORKPLACE HEALTH AND SAFETY COMMITTEES

Minister may establish committees

47.(1) For the purposes of this Act, the Minister may establish and

maintain such number of committees for such period or periods as the Minister determines each of which shall be called an industry workplace health and safety committee.

(1A) An industry workplace health and safety committee shall consist of—

- (a) a person nominated by the Minister who shall in the person's appointment be designated and shall be chairperson of the committee; and
- (b) a person nominated by the Minister, other than the person nominated under paragraph (a), who shall represent the department within which this Act is administered; and
- (c) 2 persons nominated by the Minister (other than the person nominated under subparagraph (a) or (b)) who are in the opinion of the Minister experts in the field of workplace health and safety; and
- (d) 4 persons representing employers in the industry in respect of which the committee in question is constituted; and
- (e) 4 persons representing employees in the industry in which the committee in question is constituted; and
- (f) such other persons as may from time to time be nominated by the Minister as the Minister thinks necessary.

(2) The members of an industry workplace health and safety committee shall be appointed by the Minister by notification published in the Industrial Gazette.

(3) Such a committee shall be taken to be constituted upon the publication in the Industrial Gazette of the appointment of its members.

Appointment of deputy chairperson

48.(1) If it appears to the chairperson of an industry workplace health and safety committee that the chairperson will be unable to discharge adequately the chairperson's functions under this Act for any period, the chairperson shall, in writing, inform the Minister of that fact.

(2) Upon receipt of that information, the Minister may appoint a person (whether or not the person is a member of the committee concerned) to

deputise for that chairperson during that period.

(3) A person appointed to deputise as chairperson under subsection (2) for so long as his or her appointment subsists, shall have and may exercise the functions of that chairperson.

Appointment of deputy members

49.(1) If it appears to a member of an industry workplace health and safety committee other than the chairperson that the member will be unable to discharge adequately the member's functions under this Act for any period, the member shall, in writing, inform the Minister of that fact.

(2) Where that member was nominated by the Minister under section 47(1)(a) or (b), the Minister may, upon receipt of that information, nominate another person for appointment as a deputy member of the committee concerned until that member is again able to discharge adequately those functions.

(2A) In any other case the Minister may, in writing call upon the person or body who nominated that member to nominate to the Minister another person for appointment as a deputy member of the committee concerned until that member is again able to discharge adequately those functions.

(3) The Minister may, by notification in the Industrial Gazette, appoint the person so nominated under subsection (2) as a deputy member of the committee.

(4) A deputy member, for as long as the deputy member's appointment subsists, shall have and may exercise the functions of the member for whom the member is deputising.

Term of appointment of committee member

50.(1) A member of an industry workplace health and safety committee including the chairperson shall be appointed and hold office for a term not longer than 3 years.

(2) If by the expiration of that term the member's successor has not been properly appointed, the member shall, subject to section 52, hold office until the member's successor is properly appointed.

(3) A member of such a committee shall be eligible for reappointment.

Vacating member's office

51.(1) A member of an industry workplace health and safety committee may at any time—

- (a) resign the member's appointment as such by signed writing addressed to the Minister; or
- (b) be removed from the member's appointment as such by writing under the hand of the Minister.

(2) A member of such a committee shall be taken to have vacated the member's office—

- (a) in the event of the member's resignation, upon the receipt by the Minister of the member's notice of resignation; or
- (b) in the event of the member's removal, upon the issue by the Minister of notice of the member's removal; or
- (c) in the event of the member's absence without the committee's leave first obtained from 3 consecutive ordinary meetings of the committee of which notice has been properly given to the member; or
- (d) if the member becomes incapable of performing the functions of a member; or
- (e) if the member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's estate for their benefit.

(3) For the purposes of subsection (2)(c)—

- (a) the non-attendance of a member at the time and place appointed for an ordinary meeting shall not constitute absence from that meeting unless a meeting of the committee at which a quorum is present is actually held on that day; and
- (b) the attendance of a member at the time and place appointed for an ordinary meeting shall be taken to constitute presence at an ordinary meeting because of the lack of a quorum a meeting is not actually held on that day; and
- (c) the names of the members who attend at the time and place

appointed for an ordinary meeting shall be entered in the minute book.

(4) Minutes of each meeting of each committee shall be recorded and a copy presented at the next meeting of the committee concerned for confirmation, and following confirmation shall be signed by the chairperson and shall form part of the minutes of that meeting.

Casual vacancy in member's office

52.(1) A casual vacancy shall be taken to arise in the office of a member of an industry workplace health and safety committee—

- (a) if the member dies; or
- (b) if the member's office becomes vacant as prescribed by section 51.

(2) If a casual vacancy happens in the office of a member another person shall be appointed as a member under section 47, to fill that vacancy.

(3) The appointment of a person appointed to fill a casual vacancy shall continue for as long as the appointment of the member's predecessor had the casual vacancy not occurred.

Meetings of committee

53.(1) An industry workplace health and safety committee shall meet as often as is necessary for the exercise of its functions at such times and places as the committee determines.

(2) The chairperson of a committee may convene a meeting of the committee at any time.

(3) A quorum shall consist of the chairperson and 6 other members of the committee and business shall not be conducted at a meeting of a committee unless a quorum is present.

Proceedings of committee

54.(1) Where a question requiring a vote arises at a meeting of an industry workplace health and safety committee, that question shall be decided by a majority of votes of the members present.

(2) The chairperson of a committee has a deliberative vote and also, in the event of an equality of votes on any question, a casting vote.

(3) Subject to this Act, a committee shall conduct its meetings generally and proceedings at its meetings in such manner as is prescribed or so far as is not prescribed as it determines.

Validity of acts done by the committee etc.

55. The validity of acts done by an industry workplace health and safety committee or by the chairperson or any other member of such a committee, or a deputy of any member including the chairperson, shall not be affected by any error or defect in the appointment of any such person or because of a vacancy in the membership of the committee.

Functions of committee

56. The functions of an industry workplace health and safety committee are—

- (a) to review the workplace health and safety legislation in force in respect of the industry or industries for which the committee is constituted and make suitable recommendations to the Minister for the necessary amendments to existing legislation or for the introduction of new legislation in respect of any workplace health and safety matter; and
- (b) to examine any proposal relating to education and community awareness on matters concerning health and safety and reject it or make recommendations on that proposal to the Minister; and
- (c) to examine all matters relating to workplace health and safety in respect of the industry or industries for which the committee is constituted and make recommendations in writing on those matters to the Minister; and
- (d) to examine, investigate and report on any matter referred to it by the Workplace Health and Safety Council.

Entitlements of members of industry workplace health and safety committees

57.(1) Members of industry workplace health and safety committees are to be paid the remuneration and allowances that are approved by the Governor in Council.

(2) Members of industry workplace health and safety committees shall be entitled to be reimbursed such out-of-pocket expenses necessarily incurred by them in the performance of their duties as such members as are approved by the Minister.

PART 6—WORKPLACE HEALTH AND SAFETY OFFICERS REPRESENTATIVES AND COMMITTEES*Division 1—Health and safety officers***Health and safety officers**

58.(1) An employer or, in the case of a project, a principal contractor in respect of a workplace where work is performed for or under the control of that employer or, as the case may be, principal contractor and in respect of which workplace—

- (a) 30 or more persons employed by that employer or under the control of that principal contractor are generally engaged in work at the one time; and
- (b) the Minister has determined, by notice, that nomination of a health and safety officer is required from a day fixed by the Minister for a workplace or industry described in the notice;

shall not fail to nominate for that workplace a suitably qualified person who shall be designated a health and safety officer for that workplace.

(1A) A notice under subsection (1)(b) is subordinate legislation.

(2) An employer or, in the case of a project, a principal contractor in respect of a workplace where work is performed for or under the control of

that employer or principal contractor and in respect of which workplace fewer than 30 persons are generally engaged in work at the one time, may nominate for that workplace a duly qualified person who shall be designated a health and safety officer.

(2A) The employer or, as the case may be, principal contractor may nominate for and may fill that office.

(3) Where in the opinion of the Director a workplace is of such a hazardous nature that the nomination of a health and safety officer is necessary, the Director may give directions, in writing, to the employer or, as the case may be, principal contractor to make such a nomination.

(4) A person who is designated a health and safety officer at a workplace may, with the prior approval in writing of the Director, be nominated for and hold the office of health and safety officer at another or other workplaces or for another employer or principal contractor.

(5) An employer or principal contractor who has received directions from the Director under subsection (3) shall not fail to comply with those directions.

(6) Where work is performed for or under the control of an employer or principal contractor at more than 1 workplace in the State, this section shall be read and construed so that it applies separately to each such workplace.

Duties of health and safety officers

59. Without in any way diminishing the liability of the employer or principal contractor concerned for health and safety management of the workplace, the health and safety officer shall—

- (a) advise the employer or principal contractor by whom the health and safety officer was nominated on the overall state of health and safety in the workplace concerned; and
- (b) conduct inspections of the workplace concerned for the purpose of discovering unsafe or unsatisfactory conditions and practices and to ensure by all practicable means the observance of health and safety standards; and
- (c) conduct appropriate educational programs in workplace health and safety; and

- (d) report to the employer or principal contractor by whom the health and safety officer was nominated any unsafe or unsatisfactory conditions or practices discovered on those inspections; and
- (e) ensure that all injuries, illnesses and occurrences are investigated and the record kept under section 27 is completed accordingly; and
- (f) assist the inspectors in the performance of their duties; and
- (g) in the event of any work injury, work-related illness, dangerous occurrence or immediate risk to the health or safety of any person at the workplace concerned, report the injury, illness, occurrence or other situation to the employer or, as the case may be, principal contractor; and
- (h) assist the chairperson in the organisation and conduct of meetings of a health and safety committee (if any) established for the workplace under section 71; and
- (i) perform such other duties as are prescribed.

Supervision by employer or principal contractor

60. An employer or, as the case may be, principal contractor who has nominated a health and safety officer under section 58, shall exercise supervision of the workplace concerned to ensure that the duties of that officer are being performed under this Act.

Qualifications of health and safety officer

61.(1) The qualifications required for a person to be nominated as a health and safety officer are as follows—

- (a) a sound knowledge of this Act and the regulations and codes of practice relevant to the work performed at the workplace concerned;
- (b) a sound knowledge of workplace health and safety practices;
- (c) a sound knowledge of accident investigation procedures;
- (d) such other qualifications as are prescribed.

(2) The qualifications required by subsection (1) shall be obtained by completion of a course accredited by the Director.

Division 2—Health and safety representatives

Nomination or election of health and safety representative

62.(1) The employees engaged in work at a workplace for the same employer or principal contractor may nominate or, where the majority of employees at the workplace vote in favour of an election for that purpose, elect for the workplace a duly qualified person who shall be designated and shall be the health and safety representative for the workplace.

(2) Unless it is otherwise agreed between the employer or, as the case may be, principal contractor operating at a workplace and the employees engaged at a workplace, only 1 health and safety representative need be nominated or, as the case may be, elected for such workplace.

Eligibility

63. A person shall not be nominated or elected or continue to be a health and safety representative for a workplace unless the person is or continues to be an employee at that workplace.

Qualifications of health and safety representative

64. No specific experience or qualifications shall be required for a person to be a health and safety representative unless prescribed for the industry in which the representative is engaged.

Jurisdiction of health and safety representative

65. A health and safety representative shall perform a function or duty under this Part only in respect of the workplace or the part or parts of the workplace for which the health and safety representative was elected.

Disqualification of health and safety representative

66. An inspector, employer or principal contractor may apply to the Director to have a health and safety representative disqualified on any 1 or more of the following grounds—

- (a) that the representative is not performing satisfactorily the functions that are prescribed;
- (b) that the representative has performed any function primarily with the intention of causing harm to the employer or principal contractor or the employer's or principal contractor's undertaking;
- (c) that the representative has used any information acquired from the employer or principal contractor by the representative for a purpose that is not connected with the performance of any of the representative's functions primarily with the intention of causing harm to the employer or principal contractor or the employer's or principal contractor's undertaking.

Period of disqualification

67.(1) Where the Director is satisfied that grounds exist under section 66 for the disqualification of a health and safety representative the Director may by notice in writing disqualify that representative for a specified period or permanently, and shall include in that notice reasons for that disqualification.

(2) A person who is aggrieved by a decision of the Director may appeal in writing to the Appeals Tribunal for the relevant industry constituted under Part 8.

Matters for consideration by Director

68. For the purpose of determining what action (if any) should be taken under section 67(1), the Director shall take into account—

- (a) whether any harm was caused to the employer or principal contractor or the employer's or principal contractor's undertaking by or because of the action of the representative; and
- (b) the past record of the representative in performing any functions under this Part; and

- (c) whether the action of the representative was contrary to the public interest or the health and safety of employees; and
- (d) any other matters the Director considers relevant.

Entitlement and duties of health and safety representative

69. A health and safety representative shall—

- (a) be entitled to make an inspection at prescribed intervals of all parts of the workplace for which the health and safety representative is representative; and
- (b) be entitled to report in writing to the health and safety officer or, where no such officer is required to be nominated under section 58, the employer or the principal contractor, all matters that in the representative's opinion concern the health and safety of persons at the workplace; and
- (c) be entitled to participate in the activities of a health and safety committee established under section 71; and
- (d) perform such duties as are prescribed.

Identity of officer and representative to be displayed

70.(1) An employer who has nominated a health and safety officer under section 58 shall within 5 days of that nomination cause the identity of the officer to be prominently and permanently displayed at the appropriate workplace while the officer remains in the position.

(2) Where an employee has been properly nominated or elected as health and safety representative under section 62, the employee's employer or, as the case may be, the principal contractor shall within 5 days of that election cause the identity of the representative to be prominently and permanently displayed at the appropriate workplace while the representative remains in the position.

Division 3—Health and safety committees

Establishment of health and safety committees

71.(1) An employer or principal contractor for a workplace where work is performed for, or under the control of, the employer or principal contractor may establish a health and safety committee for the workplace.

(1A) An employer or principal contractor for a workplace where work is performed for, or under the control of, the employer or principal contractor must—

- (a) if required to do so by regulation—establish a health and safety committee for the workplace within the prescribed period; or
- (b) if requested to do so by a health and safety representative—establish a health and safety committee for the workplace within 1 month after receiving the request.

(2) Where the Director is of the opinion that the work performed by the employees at a workplace is or is likely to be especially dangerous, the Director may give directions, in writing, to the relevant employer or, as the case may be, principal contractor, to set up such health and safety committee or committees as the Director thinks necessary for that workplace.

(2A) An employer or principal contractor who has received directions from the Director under this subsection shall not fail to comply with those directions within 1 month of receiving them.

(3) The composition of a health and safety committee shall be—

- (a) as prescribed for the industry concerned; or
- (b) where not prescribed, shall—
 - (i) consist of at least 2 persons; and
 - (ii) include any health and safety officer and representatives employed at that workplace; and
- (c) otherwise be at the discretion of the employer or, as the case may be, principal contractor.

(4) Every health and safety committee shall meet at least once every 3 months and, in addition, when required by the health and safety officer to do so.

(5) Subject to this Act, every health and safety committee shall regulate its own procedures.

Functions of health and safety committees

72. The functions of every health and safety committee shall be to—

- (a) act in an advisory capacity to the employer or principal contractor concerned; and
- (b) create and maintain at the workplace concerned an active interest in health and safety and assist in reducing work injuries, work-related illnesses and dangerous occurrences; and
- (c) consider measures for the training and education in and promotion of health and safety at the workplace concerned and make recommendations to the employers or principal contractors concerned in relation to those measures; and
- (d) facilitate cooperation between the employer or principal contractor concerned and the employers's or principal contractor's employees in instigating, developing and carrying out measures designed to ensure the health and safety of those employees; and
- (e) formulate, review and disseminate (in such languages as are appropriate) to the employees concerned the standards, rules and procedures relating to health and safety that are to be carried out or complied with at the workplace; and
- (f) review the circumstances surrounding recent work injuries, work-related illnesses and dangerous occurrences at the workplace concerned, advise the employer of the results of those reviews and make such recommendations as the committee considers desirable; and
- (g) initiate programs aimed at arousing and maintaining the interest of the employer and employees concerned in workplace health and safety; and
- (h) maintain records of meetings including any recommendations made and keep those records available for perusal or copying or both by an inspector; and
- (i) assist in the resolution of issues in respect of workplace health and safety as required.

Employer or principal contractor to assist health and safety officers and representatives

73. An employer or, in the case of a project, a principal contractor in respect of a workplace where work is performed for or under the control of that employer or principal contractor shall—

- (a) permit the health and safety officer to have access to such information as the employer or principal contractor possesses relating to—
 - (i) actual or potential hazards arising at any workplace under the control and management of the employer or principal contractor, the conduct of the undertaking of the employer or principal contractor or the plant or substances used for the purposes of that undertaking; and
 - (ii) the health and safety of the employees of or under the control of that employer or principal contractor; and
- (b) permit the health and safety officer to be present at any interview concerning health and safety between the employer or principal contractor and an employee after prior approval of the employee has been obtained; and
- (c) consult the health and safety officer and health and safety representatives on all proposed changes to the workplace, the plant or substances used in that undertaking or the conduct of that undertaking being changes that may affect health and safety at the workplace; and
- (d) provide such other facilities and assistance to the health and safety officer as are prescribed or, where not so prescribed, as are necessary to enable the officer to perform the officer's functions; and
- (e) permit the health and safety officer to seek appropriate advice on matters which may affect health and safety at the workplace; and
- (f) permit the health and safety representative to make the inspections referred to in section 69; and
- (g) in order to give effect to the responsibilities under this Part, the employer or, as the case may be, principal contractor may instruct the officer or representatives on action to be taken to implement

workplace health and safety policy.

Director may grant exemptions from Part 6

74. The Director may, on conditions or unconditionally—

- (a) exempt any employer or principal contractor from compliance with Part 6, in whole or in part; or
- (b) vary, in whole or in part, compliance with Part 6 if the Director is satisfied that the employer or principal contractor has effected a health and safety management policy and training program which in the opinion of the Director satisfies the intent of Part 6.

No civil liability incurred

75. Neither a health and safety officer nor a health and safety representative nor any member of a health and safety committee shall incur any civil liability arising from their performance of or their failure to perform any health and safety function under this Part.

PART 7—ADMINISTRATION

Division 1—Director's powers and annual report

Delegation

76. The Director may delegate the Director's powers under this Act to an officer or employee of the department or another person.

Annual report

77.(1) The Director of the Division of Workplace Health and Safety shall in every year prepare and submit to the Minister a report on the operation of this Act throughout the preceding year.

(2) The Minister shall lay every report submitted to it under subsection

(1) before the Legislative Assembly within 14 sitting days after its receipt by the Minister.

Division 2—Officers and acting inspectors

Officers

78.(1) Inspectors and such other officers as are deemed necessary for the effectual administration of this Act may be appointed and shall hold office under the *Public Service Management and Employment Act 1988*.

(2) An officer of the public service may, in addition to the position the officer holds, be appointed to and hold office for the effectual administration of this Act.

Acting inspectors

79.(1) The Director may appoint under and for the purposes of this Act such and so many persons or a class of person as the Director considers necessary to act as inspectors, for such locality of Queensland as the Director defines in the appointment, for a period, not longer than 2 years, specified in the appointment or until the appointment is sooner revoked by the Director.

(1A) While that person is acting as an inspector for those purposes, that person shall have and may exercise all of the functions from time to time assigned to the person in writing by the Director and every reference in this Act to an inspector shall be taken to include a reference to such an acting inspector.

(2) A person shall not be appointed an inspector under subsection (1) unless the person possesses, in the opinion of the Director, sufficient qualifications to permit the person to exercise the functions assigned to him or her.

Certificate of appointment

80. Each inspector shall as far as practicable be furnished with a certificate of appointment, which incorporates a recent photograph of the inspector concerned, signed by the Director and upon entering any place

shall, if required, produce that certificate (unless the inspector's appointment has been made by lettergram or any other transmitted electronic communication when the inspector shall, if required, produce that lettergram or communication) to the occupier of the place.

Division 3—Provisions relating to inspectors

Powers of inspectors

81. In addition to all of the other powers conferred upon the inspector by any of the other provisions of this Act, an inspector may at any time—

- (a) enter and remain at any premises and carry out such inspections and examinations as are necessary to ensure compliance with the provisions of this Act; and
- (b) call to the inspector's aid any person who in the inspector's opinion is competent to assist the inspector in the exercise of the inspector's powers under this Act; and
- (c) control, restrict or prohibit the movement of any person, except where that person is an employer, a principal contractor, an owner or an employee or a self-employed person controlling the performance of or performing work at the material time at or in respect of the workplace concerned, at a workplace where a work-related illness, serious bodily injury or dangerous occurrence has happened or is likely to happen; and
- (d) call to the inspector's aid any police officer where the inspector has reasonable cause to apprehend any obstruction in the exercise of the inspector's functions or in the administration of this Act; and
- (e) question with respect to matters under this Act any person whom the inspector finds in or at the premises or whom the inspector has reasonable cause to believe to be, or to have been, an employee who performed work for an employer at that premises and require that person to answer the questions put, which power of an inspector to question an employee shall include power to question that employee out of the hearing of the employer or of any supervisor, manager or other superior officer; and

- (f) make such examination and inquiry as may be necessary to establish whether the provisions of this Act or of any Act relating to public health and safety are being complied with in every respect in regard to any workplace, any employer for whom work is being performed at a workplace and any employee of such an employer, and any principal contractor of a project; and
- (g) require the production of any permit, certificate, or other authority under this Act held or had by any person or alleged by any person to be held or had by the person, or of any book, record, list or document of any kind required by this Act to be held or kept by any person, and inspect and examine the same and make copies of and take extracts from the same or of any part of the same or of any entries in the same, or do any of those things; and
- (h) for the purpose of carrying out the inspector's functions under this Act require any employer, owner or principal contractor for whom work is or is in the course of, or has been, performed at a workplace to produce for the inspector's inspection (at such time and place as may be specified by the inspector) all contracts and other documents relevant to the performance of that work; and
- (i) take such copies of and extracts from contracts or other documents produced for the inspector's inspection under paragraph (h); and
- (j) require any person whom the inspector finds committing or whom the inspector suspects on reasonable grounds has committed an offence against this Act, or whom the inspector is authorised to question for the purposes of this Act, or whose name and place of residence is in the inspector's opinion reasonably required for the purposes of this Act, to state his or her name and place of residence and, if the inspector suspects on reasonable grounds that the name or place of residence or name and place of residence as stated is false, require evidence of the correctness of them; and
- (k) institute proceedings under this Act; and
- (l) take and remove, for purposes of analysis, samples of materials and substances, and any article or thing used or handled in connection with the business or any process carried on in any

place but, in the exercise of the power in this paragraph defined, the inspector shall notify the owner, occupier or the employer or principal contractor concerned or their representative of the samples, articles or things so taken and removed; and

- (m) conduct surveys including such tests as are necessary to assess the degree of risk or health and safety standards existing in a workplace; and
- (n) take photographs or measurements or make sketches or recordings; and
- (o) exercise such other powers as may be prescribed.

Completion of matters by inspectors

82. Despite anything to the contrary in this Act, if an inspector has issued any notice or made any request under this Act, the inspector or any other inspector who is empowered by this Act to issue or make a like notice or, as the case may be, request, may at any time by direction of the Director withdraw or revoke or vary the notice or request, or take further steps on the notice or request.

Entry to domestic premises

83.(1) Before an inspector enters any domestic premises, not being a project, under a power conferred by any provision of this Act the inspector shall, except where the inspector has the permission of the occupier of those premises to the inspector's entry, obtain from a justice a warrant to enter.

(2) A justice who is satisfied upon the complaint of an inspector that there is reason to believe that any premises are of a description such that an inspector is, by this Act, empowered to enter in the premises may issue the justice's warrant directed to the inspector to enter the premises specified in the warrant for the purpose of exercising in the premises the powers conferred on the inspector by this Act.

(3) A warrant issued under this section shall be, for a period of 1 month from its issue, sufficient authority—

- (a) to the inspector to whom it is directed and to all persons acting in aid of the inspector to enter the premises specified in the warrant;

and

- (b) to the inspector to whom it is directed to exercise in respect of the premises specified in the warrant all the powers conferred on an inspector by this Act.

(4) For the purposes of this section—

“**domestic premises**” does not include parts of premises which parts are not used exclusively for the purpose of private residence, or the curtilage of any premises.

Inspector’s power of seizure

84.(1) If it appears to an inspector that any premises or part of premises, plant or substance is so defective or hazardous as to be likely to cause death, serious bodily injury or damage to property or is not of a description and of a standard prescribed or set by the Director, the inspector may seize the relevant premises or part of premises, plant or substance.

(2) For the purposes of carrying out such seizure, an inspector may—

- (a) issue a notice in the prescribed form to an employer, owner, principal contractor or occupier stating the intention of the inspector to—
 - (i) remove any plant or substance or part of plant or premises from the premises; or
 - (ii) dismantle or cause to be dismantled any plant by giving direction to such person as the inspector sees fit; or
- (b) affix to any part of the premises or plant a notice in the prescribed form stating that no work is to be performed in such premises or on such plant or part of premises or plant until further notified by the inspector in writing.

(3) A person required by an inspector to dismantle any plant for the purposes of this section or who is directed by an inspector to take any other action for the purposes of this section shall comply with the direction immediately.

Consequences of seizure

85.(1) Any premises, plant or substance seized by an inspector under this Act shall be kept by the inspector until the expiration of the time limited by this Act for the institution of an appeal or, if an appeal is properly instituted, until the determination of the appeal and, in the former case, upon such expiration or, in the latter case, a determination that confirms the seizure, the premises, plant or substance seized shall be forfeited to the State and may be disposed of as the Director at any time directs.

(2) Neither the Crown nor any inspector shall be liable because of damage to or destruction of any premises, plant or substance seized by an inspector that happens, without intent of the inspector, during the time it is kept by the inspector under subsection (1).

Powers and duties of police officers

86.(1) Where under section 81(d) an inspector calls to his or her aid a police officer, it shall be the duty of that member to aid that inspector as required and a member so aiding shall, for those purposes, be taken to be an inspector and shall have all of the functions of an inspector under this Act in addition to those functions vested in him or her as a police officer.

(2) Where an offence by a person against this Act consists of—

- (a) a failure to comply with a requisition by an inspector to state the person's true name or place of residence; or
- (b) assaulting or resisting an inspector in the performance of the inspector's functions under this Act or attempting to do so; or
- (c) the stating of a name or place of residence that is false in any particular in response to a requisition made to the person by an inspector; or
- (d) using any threat to an inspector or to an employee who is connected with an inspection, examination or inquiry being made under this Act;

any police officer may arrest without warrant a person whom the police officer finds committing or whom the police officer suspects on reasonable grounds has committed such an offence upon a charge of that offence and take that person before a justice to be dealt with according to law.

(3) Where—

- (a) an inspector has given a lawful direction orally or a notice in writing under the provisions of this Act to any person; and
- (b) the person to whom the direction or notice was given has failed to comply with the inspector's direction or notice within the time specified; and
- (c) it appears to an inspector that the failure to comply with such a direction or notice is likely to cause death or serious bodily injury to any person or damage to any property;

the person who failed to comply with that notice or direction commits an offence against this Act and any police officer may arrest without warrant a person whom the police officer finds committing or whom the police officer suspects on reasonable grounds has committed such an offence upon a charge of that offence and take that person before a justice to be dealt with under law.

(4) Proceedings where an offender has been arrested without warrant to be dealt with under subsection (2) or (3) shall be taken in a summary way under the *Justices Act 1886*.

Occupiers etc. to allow entry and inspection

87. Every owner, occupier, employer, principal contractor or person entitled to immediate possession of any workplace, and every agent and employee (if any) of any of those persons, shall allow an inspector to enter any premises for the purpose of making an inspection and shall furnish to an inspector all reasonable assistance and all such information as that person is capable of furnishing as is required by that inspector in the exercise of the inspector's functions under this Act.

Obstructing an inspector or person assisting an inspector

88. A person shall not—

- (a) assault, threaten, hinder, abuse, insult, intimidate or otherwise obstruct an inspector or a person assisting an inspector in the exercise of the inspector's functions under this Act, or attempt to do so; or

- (b) fail to answer any question put to the person under the provisions of this Act by an inspector or give any false or misleading answer to any such question; or
- (c) fail to comply in any respect with the lawful request, requirement, direction, notice or order of an inspector; or
- (d) when required by or under this Act to furnish any assistance or to furnish any information to an inspector, fail to furnish that assistance or information, as the case may be, or in the latter case, furnish false or misleading information; or
- (e) fail, when so required by an inspector, to produce any permit, certificate or authority of any kind held or had by the person or alleged by the person to be held or had by the person under or for the purposes of this Act, or any book, record, list or other document of any kind required by this Act to be held or kept by the person, or, upon the person so producing the same, fail to allow the inspector to inspect or examine it or the inspector to make copies of or take extracts from it or of any part of it or of any entries in it; or
- (f) directly or indirectly prevent any person from appearing before or being questioned by an inspector, or attempt to do so; or
- (g) impersonate an inspector.

Limited use of answers given under compulsion of Act

89. Where a person who before answering a question or giving any information under the compulsion of this Act objects to an inspector that to do so might incriminate the person in the commission of an offence against this Act the answer so given or that particular information so furnished shall not be used in proceedings against the person other than for an offence defined in section 88(b) or (d).

Division 4—Improvement and prohibition notices

Improvement notice

90.(1) Where an inspector is of the opinion that any person—

- (a) is contravening any provision of this Act; or
- (b) has contravened any such provision in circumstances that make it likely that the contravention will continue or be repeated;

the inspector may issue to and serve on the person an improvement notice requiring the person to remedy the contravention or the likely contravention or the matters or activities occasioning the contravention or the likely contravention.

(2) An improvement notice shall—

- (a) state that the inspector is of the opinion that the person—
 - (i) is contravening a provision of this Act; or
 - (ii) has contravened with such a provision in circumstances that make it likely that the contravention will continue or be repeated; and
- (b) state the reasons for that opinion; and
- (c) specify the provision of this Act in respect of which that opinion is held; and
- (d) specify the day before which the person is required to remedy the contravention or the likely contravention.

(3) A person who contravenes the requirements of an improvement notice before the date specified in that notice commits an offence against this Act.

Prohibition notice

91.(1) Where, in the opinion of an inspector, circumstances have arisen or are likely to arise in a workplace or in relation to any plant or substance to which this Act applies, such as to have caused or are likely to cause an immediate risk to the health and safety of any person, the inspector may give an oral direction to or issue to and serve on the person who, in the opinion of the inspector, has or may reasonably be presumed to have control over the activity or procedure or plant or substance that caused those circumstances a prohibition notice prohibiting the carrying on of that activity

or procedure or the use of that plant or substance other than the work necessary to rectify such circumstances until an inspector is satisfied that the matters that gave or will give rise to the risk are remedied.

(2) A prohibition notice shall—

- (a) state that the inspector is of the opinion that circumstances have arisen or, as the case may be, are likely to arise such as to have caused or are likely to cause an immediate risk to the health and safety of any person; and
- (b) state the reasons for that opinion; and
- (c) specify the circumstances that, in the inspector's opinion have caused or are likely to cause the risk; and
- (d) where in the inspector's opinion the circumstances involve a contravention of or likely contravention of any provision of this Act—specify that provision and state the reasons for that opinion.

(3) A prohibition notice may also contain directions by the inspector to the person to whom the notice was issued to refrain from—

- (a) using or operating any premises or part of premises, plant or substance to which the prohibition notice relates; or
- (b) performing work in respect of which the prohibition notice is given and any other work in the vicinity that is likely to cause death or serious bodily injury to any person or damage to property unless the prohibition notice is complied with; or
- (c) selling, letting or hiring, lending or otherwise disposing of any plant or substance in respect of which the prohibition notice is given;

until the directions contained in the prohibition notice are complied with.

(4) A person who contravenes an oral direction or prohibition notice properly given or issued under this section before the time nominated in the direction or, as the case may be, notice commits an offence against this Act.

Service of notices

92.(1) A notice issued under this Act to any person by an inspector may be served—

- (a) by delivery of the notice to that person or the person's manager, supervisor or agent personally; or
- (b) by sending the same in a prepaid post letter addressed to that person at the person's place of business or residence; or
- (c) by sending the notice by prepaid certified mail addressed to that person at the person's place of business or residence in which case the receipt from a post office for the letter is evidence and, in the absence of evidence to the contrary, conclusive evidence that it was so sent and that it was given to that person when the letter would have been delivered to the person in the ordinary course of post.

(2) If an owner, occupier, employer, principal contractor or other person is absent from the place when an inspector seeks to serve the person with a notice under a provision of this Act the notice may be served on the person who appears to the inspector to be in charge of the place to which the notice relates and shall be taken to have been served on the owner, occupier, employer, principal contractor or other person to whom it is directed.

(2A) The person on whom notice is served under this section shall, as soon as practicable, bring it to the knowledge of the owner, occupier, employer, principal contractor or other person to whom it is directed.

(3) A person on whom a notice is served for the purposes of this Act shall, if required by an inspector to do so, acknowledge receipt by signing a duplicate copy of the notice.

Appeal against prohibition or seizure notice

93. A person to whom a prohibition notice or a seizure notice is issued may appeal against the notice to the Appeals Tribunal constituted under Part 8.

Order to secure compliance with notices etc.

94.(1) Where it appears to the Director—

- (a) that a person to whom an inspector has issued a notice under the provisions of this Act—
 - (i) has failed to comply with the notice and by the failure has

committed an offence against this Act; or

- (ii) having instituted an appeal against such notice has failed to comply with the provisions of section 107 or is likely to fail to comply with that section; and
- (b) that as a consequence of that failure or likely failure to comply there is an imminent risk of serious bodily injury or work-related illness to any person or of a dangerous occurrence;

the Director may make application to the Supreme Court in Chambers for an order in the nature of a mandatory or restrictive injunction against the person to restrain the person from contravening the provisions of this Act, generally, or with 1 or more particular provisions of this Act.

(2) On an application made under subsection (1), the Court may make such order, directed to the person to whom the application relates, as it considers just and necessary to secure that person's compliance with this Act or any provisions of this Act.

(3) In addition to any other liability that a person may incur for breach of an order made against that person under this section, a person to whom such an order is directed who breaches the order commits an offence against this Act and is liable—

- (a) if a body corporate—to a penalty of 1000 penalty units; or
- (b) if a person other than a body corporate—to a penalty of 200 penalty units, imprisonment for 6 months or both.

PART 8—APPEALS TRIBUNAL

Appeals Tribunal

95.(1) There shall be constituted a tribunal to be called the Appeals Tribunal.

(2) The Appeals Tribunal shall consist of 3 persons of whom—

- (a) 1 shall be an Industrial Magistrate who shall be a continuing member of the Appeals Tribunal appointed by the Governor in

Council and shall be the chairperson; and

- (b) 2 shall be provisional members of the Appeals Tribunal who shall be appointed in respect of each appeal by the Minister of whom—
 - (i) where the appeal in question concerns a workplace—
 - (A) 1 shall be a person who is, in the opinion of the Minister, suitably qualified to be a representative of persons who are employers or principal contractors or, as the case may require, both employers and principal contractors in the industry to which the appeal relates; and
 - (B) 1 shall be a person who is, in the opinion of the Minister, suitably qualified to be a representative of persons who are employees in the industry to which the appeal relates; and
 - (ii) where the appeal concerns plant—
 - (A) 1 shall be a person who is, in the opinion of the Minister, suitably qualified to be a representative of persons who are owners, manufacturers, importers, suppliers, erectors or, as the case may be, installers of plant of the kind that is the subject of the appeal concerned; and
 - (B) 1 shall be a person who is, in the opinion of the Minister, suitably qualified to be a representative of persons who use or operate plant of the kind that is the subject of the appeal concerned; and
 - (iii) where the appeal concerns a substance—
 - (A) 1 shall be a person who is, in the opinion of the Minister, suitably qualified to be a representative of persons who are owners, manufacturers, importers or, as the case may be, suppliers of that kind of substance; and
 - (B) 1 shall be a person who is, in the opinion of the Minister, suitably qualified to be a representative of persons who use that kind of substance.

(3) The term of appointment of the continuing member made to the Appeals Tribunal shall commence on the date specified by the Governor in Council and except where the appointment is to a casual vacancy, shall be for a period of 1 year.

(4) A provisional member appointed to the Tribunal shall hold office during the course of the hearing and determination of the appeal in respect of which the provisional member is appointed.

(5) A person shall be eligible for further appointment as a member of the Appeals Tribunal.

(6) A person appointed as a continuing member of the Appeals Tribunal shall, unless the person sooner vacates the person's office as prescribed, continue to hold office until the person's successor assumes office in the person's place.

Vacation of office

96.(1) A member of the Appeals Tribunal may, by notice in writing furnished to the Minister, resign the member's office at any time.

(2) The Governor in Council may at any time remove from office a continuing member of the Appeals Tribunal by notice in writing furnished to the member.

(3) A member of the Appeals Tribunal shall be taken to have vacated the member's office if the member—

- (a) dies; or
- (b) resigns; or
- (c) in the case of the continuing member—
 - (i) ceases to be a Stipendiary Magistrate; or
 - (ii) is removed from office as such member.

Filling vacancies

97.(1) If a casual vacancy happens in the office of the continuing member of the Appeals Tribunal during the currency of the continuing member's term of appointment, there may be appointed to fill that vacancy a person

who is a Stipendiary Magistrate.

(2) A person appointed to fill a casual vacancy as provided in subsection (1) shall hold office for the remainder of the term for which the person's predecessor was appointed but shall be eligible for reappointment if the person remains otherwise qualified as prescribed to be a member of the Appeals Tribunal.

Validation of proceedings

98. No proceedings of the Appeals Tribunal shall be invalidated because of any defect in the appointment of any person as a member of the Tribunal.

Functions of the Tribunal

99. It is the function of the Appeals Tribunal—

- (a) to hear any appeal, which is within the jurisdiction of the Tribunal, that is referred to it under the provisions of this Act; and
- (b) to make or cause to be made such investigations as it considers necessary for the purposes of such hearing; and
- (c) to determine every such appeal under and for the purposes of the provisions of this Act.

Determination of questions before the Appeals Tribunal

100.(1) Subject to subsection (2), a question before the Appeals Tribunal shall be decided according to the opinion of a majority of the members constituting the Tribunal.

(2) A question of law arising before the Tribunal shall be decided by the chairperson.

Status of Appeals Tribunal and powers of its members

101.(1) Subject to this Act, the Appeals Tribunal shall in the discharge of its functions be taken to be a Commission of Inquiry within the meaning of the *Commissions of Inquiry Act 1950* and the provisions of that Act, other than sections 4, 4A, 10(3), 13, 14(1A), 19(2), 19A, 19B, 19C and 26, shall

apply accordingly.

(1A) However, if a provision of that Act is inconsistent with a provision of this Act, the provisions of this Act, to the extent of the inconsistency shall prevail.

(2) For the purposes of applying the provisions of the *Commissions of Inquiry Act 1950*, each member of the Tribunal shall be taken to be a commissioner and the chairperson shall be taken to be the chairperson within the meaning of that Act.

(3) There shall be payable to a witness who appears before the Tribunal an allowance for expenses being—

- (a) the allowance payable under section 24 of the *Commissions of Inquiry Act 1950*; or
- (b) such other allowances as the chairperson of the Tribunal in special circumstances considers reasonable;

whichever is the greater and that allowance shall be paid out of funds appropriated by the Parliament for that purpose.

Secretary to Appeals Tribunal

102. An officer of the department is to be assigned to act as secretary of the Appeals Tribunal.

Institution of appeal

103.(1) An appeal shall be instituted within 14 days from the date on which the person instituting the appeal referred to in this Part as the appellant receives notification of the notice or decision by which the person is aggrieved and no later, by lodging with the secretary a notice of appeal in writing in the prescribed form and paying the prescribed fee.

(2) The grounds of appeal shall be clearly and briefly set out in the notice of appeal.

(3) The appellant may at any time, by notice in writing to the secretary, withdraw the appeal.

Notice of hearing

104.(1) When an appeal has been properly instituted, the secretary shall arrange with the chairperson of the Appeals Tribunal a date, time and place for the hearing of the appeal and shall give at least 7 days' notice to the appellant and to the Director.

(2) An appeal shall be heard and determined as soon as is practicable after the date on which it is instituted.

Venue and nature of appeal

105.(1) The Appeals Tribunal shall sit at such place as the chairperson appoints and shall determine an appeal on the evidence that was before the Director or, as the case may be, inspector in the matter in question and on such further evidence as, in the opinion of the chairperson, is relevant to the matter of inquiry.

(2) The Tribunal may inform itself on any matter in such manner as it deems fit and subject to this Act, shall not be bound by rules and practices as to evidence.

(3) Subject to this Act, an appeal shall be conducted in accordance with directions of the Tribunal, which directions shall be consistent with natural justice.

(4) The appellant or, as the case may be, the Director or inspector may appear before the Tribunal in person or by counsel or solicitor or by an agent acceptable to the Tribunal.

Determination of appeal

106. By way of determining an appeal, the Appeals Tribunal may confirm, vary or set aside the notice or decision in issue and may make any determination and order that the Director or inspector could properly have made under this Act with respect to the matter in question, and may make such order as to costs as prescribed or if not so prescribed, as it thinks proper.

Consequences of appeal

107.(1) When an appeal against a notice of an inspector or a decision of the Director has been properly instituted—

- (a) a person shall not use or operate or permit to be used or operated any premises or part of premises or plant to which the notice or decision relates; and
- (b) a person shall not perform or permit to be performed any work in respect of which the notice or decision is issued;

until the appeal is determined or struck out, as the case may be.

(2) Where the Appeals Tribunal on appeal confirms or varies a notice, it shall appoint a time within which the notice is to be complied with and—

- (a) in the case of a variation—the notice as so varied shall be taken to be the notice issued to the appellant; and
- (b) in both cases—the time so appointed shall be taken to be the time specified in the notice issued by the inspector.

(3) Where the Appeals Tribunal on appeal sets aside a notice, it shall be taken that the notice had not, at any time, been given.

(4) The decision of the Appeals Tribunal shall be final and conclusive and effect shall be given to that decision.

Restricted right to question Tribunal's proceedings

108. The proceedings of the Appeals Tribunal and the determination of the Appeals Tribunal shall not be questioned in any proceedings whatever except proceedings based solely on 1 or both of the following grounds—

- (a) that the Appeals Tribunal had or has no jurisdiction or has exceeded its jurisdiction in the proceedings in question or in making the determination in question;
- (b) there has occurred a denial of natural justice in the course of the proceedings in question.

PART 9—PROVISIONS RELATING TO PERFORMANCE OF WORK IN CERTAIN OCCUPATIONS

Division 1—Requirements for work in prescribed occupations

Certificate, permit or authority required for work in certain occupations

109.(1) An employer or principal contractor shall not cause, permit, allow or employ any person to perform work in a prescribed occupation unless that person is the holder of a current certificate of competency, permit or authority to operate issued by the Director on the recommendation of an inspector or accredited officer for that occupation and held as prescribed under this Act.

(2) A person shall not perform work in a prescribed occupation unless that person is the holder of a current certificate of competency, permit or authority to operate issued by the Director on the recommendation of an inspector or accredited officer for that occupation and held as prescribed under this Act.

Director's power to exempt

110.(1) The Director may by declaration, either on the Director's own initiative or upon application made to the Director in that behalf by any person, exempt a person or persons or any class of person from the operation of all or any of the provisions of this Part.

(2) A declaration by the Director under subsection (1)—

- (a) must be by way of notice, if it is made on the Director's own initiative; and
- (b) shall be by notice in writing to the applicant, if it is made on the application of any person; and
- (c) may be in respect of work of a particular description generally or in respect of work to be performed in respect of a particular workplace or project; and

(d) may be unrestricted or restricted as to its extent or the circumstances in which the exemption will apply as the Director thinks fit.

(3) A person who engages in work of a type declared by the Director to be work in respect of which subsection (1) shall not apply and who fails to comply with any restriction to which the declaration is subject, commits an offence against this Act.

(4) A notice mentioned in subsection (2)(a) is subordinate legislation.

Division 2—Accredited officers

Accredited officers

111.(1) The Minister or Director may appoint a duly qualified person, whether an officer of the public service or not, to be an accredited officer for such period as the Minister or Director specifies in the appointment.

(2) A person shall not be appointed as an accredited officer unless the person possesses, in the opinion of the Minister or Director, sufficient qualifications to permit the person to exercise and perform the functions likely to be assigned to the person by the Director.

(3) An accredited officer appointed under subsection (1) shall exercise and perform such functions as are from time to time assigned to the accredited officer in writing by the Director.

Certificates of appointment

112.(1) Every accredited officer appointed for the purposes of this Act shall be furnished with a certificate of appointment, signed by the Director which shall be sufficient evidence of the appointment.

(2) An accredited officer shall carry the certificate of appointment at all times while in the execution of his or her duty and, if required to do so, shall produce it to a person in charge of a place that the accredited officer wishes to enter.

Division 3—Boards of reference**Appeal to board of reference concerning certificates etc.**

113.(1) A person who is aggrieved by a decision of the Director not to grant a certificate of competency, permit or authority to operate under the provisions of this Act or who has had the person's certificate, permit or authority to operate suspended or revoked under those provisions, may appeal in writing to a board of reference established and maintained under this Act for the relevant industry.

(2) An appeal referred to in subsection (1) shall be instituted within 21 days after the person aggrieved is informed of the Director's decision and shall be instituted, heard and determined in the manner prescribed or, in so far as it is not prescribed, as the board directs.

(3) Upon an appeal a board may affirm, rescind or vary the decision of the Director, and the board's decision shall be taken to be that of the Director and shall be final and conclusive.

Minister may establish boards of reference

114.(1) For the purposes of this Act, the Minister may establish and maintain such boards of reference for a specified industry or for specified industries or a class or classes of industry as the Minister determines, each of which shall be called a board of reference, with such functions as are prescribed.

(2) A board of reference shall—

- (a)** where the board is established for the purpose of hearing and determining appeals under section 113 (Appeal to board of reference concerning certificates etc.)—consist of —
 - (i)** a nominee of the Minister who shall in the nominee's appointment be designated and shall be chairperson of the board; and
 - (ii)** 2 persons who, in the opinion of the Minister, have experience appropriate to the relevant industry; and
- (b)** where the board is established for any other purpose under this Act—consist of—

- (i) the Director of Accident Prevention appointed or taken to be appointed under and for the purposes of this Act, who shall be chairperson of the board; and
- (ii) 2 persons who, in the opinion of the Minister, have experience appropriate to the relevant industry.

(3) The members of a board of reference shall be appointed by the Minister by notification published in the Industrial Gazette.

(3A) A board of reference shall be taken to be established upon the publication in the Industrial Gazette of the appointment of its members.

(4) A board of reference shall meet as often as is required by the Minister.

(5) Subject to this Act, a board of reference shall conduct its business generally and proceedings at its meetings in such way as is prescribed or so far as not prescribed as it determines.

Costs

115. A board of reference may make such order as to costs to be paid to either party in the prescribed manner or, so far as it is not prescribed, in the way approved by the Minister.

Entitlements of members of boards of reference

116.(1) Members of boards of reference are to be paid the remuneration and allowances that are approved by the Governor in Council.

(2) Members of a board of reference shall be entitled to be reimbursed such out-of-pocket expenses necessarily incurred by them in the performance of their duties as such members as are approved by the Minister.

PART 10—LEGAL PROCEEDINGS

Liability under Part 2 not restricted in certain circumstances

117. The person on whom a duty is cast by any of the provisions of Part 2 is liable for a breach of that duty even though the act or omission that evidences a failure to perform that duty is the act or omission of another person or that the act or omission is contrary to the person's instructions and in relation to such breach of duty sections 23 and 24 of the Criminal Code do not apply.

Offences against Act and general penalty

118.(1) A person who contravenes any provision of this Act or any notice or requisition of an inspector given to the person under this Act commits an offence against this Act.

(2) Except where this Act otherwise prescribes, a person who is convicted of an offence against this Act is liable—

- (a) if a body corporate—to a penalty of 200 penalty units; and
- (b) if a person other than a body corporate—to a penalty of 50 penalty units, 6 months imprisonment or both.

Particular penalty

119.(1) A person who is convicted of an offence against this Act that consists of a contravention with any provision of this Act or any notice of an inspector given to the person under this Act—

- (a) in the case where as a consequence of the contravention the death of any person or serious bodily injury or work related illness to any person has occurred—is liable—
 - (i) if a body corporate—to a penalty of 2 000 penalty units; and
 - (ii) if a person other than a body corporate—to a penalty of 500 penalty units, 6 months imprisonment or both; and
- (b) in the case where the contravention is of such a nature that it may be committed from day to day—is liable, in addition to any other

penalty to which the person is liable under this Act, to a penalty of 1 penalty unit for each day during which it is continued as from the date of its happening until the date on which the person is convicted of the offence or until the date on which the default is rectified, whichever date is the earlier.

(2) A person who, being convicted of an offence against this Act that consists of a contravention of such a nature that it may be committed from day to day, continues that offence may be prosecuted from time to time for an offence against this Act that consists of the same contravention and is liable to a penalty of 2 penalty units for each day during which it is continued as from the date on which the person was last convicted until the date on which the person is convicted or on which the default is rectified, whichever date is the earlier.

Proceedings in respect of offences

120.(1) A prosecution for an offence against this Act shall be by way of summary proceedings before an Industrial Magistrate.

(1A) Jurisdiction is then conferred on all Industrial Magistrates to hear and determine such proceedings.

(2) A person aggrieved by a decision of an Industrial Magistrate in proceedings brought under subsection (1) who desires to appeal shall appeal to the Industrial Court.

(2A) Jurisdiction is then conferred on the Industrial Court to hear and determine such an appeal.

(3) The provisions of the *Industrial Relations Act 1990* and the rules of court made under that Act shall, subject to this Act, apply according to their tenor in relation to proceedings before an Industrial Magistrate brought under subsection (1) and in relation to proceedings on appeal before the Industrial Court brought under subsection (2).

(4) Unless otherwise provided by this Act, a prosecution for an offence against this Act shall be commenced by complaint of an inspector or of any person authorised by the Minister or the Director.

Fees, penalties and costs

121. All fees paid and all penalties recovered and costs incurred in respect of proceedings under this Act shall be paid to the Consolidated Fund.

Responsibility for offences against Act in relation to projects

122.(1) Where an offence against this Act is committed in respect of the performance of work on a project the person, being the principal contractor in relation to that project, or an employer of employees engaged on the project, who is in control of the performance of that work at the time the offence is committed, shall be taken to have committed the offence and to be liable for the offence under this Act, except—

- (a) where it appears from this Act that another person is intended to be solely liable in respect of the offence; or
- (b) where the person did not know and could not by the exercise of reasonable diligence have known of the commission of the offence.

(1A) Liability incurred because of this subsection shall be additional to liability incurred by any other person because of the offence in question.

(2) Where the person sought to be made liable because of subsection (1) is a body corporate, the knowledge and means of knowledge to which regard shall be had, for the purposes of that subsection, shall be that of the person who, at the time the offence is committed, is the person who in respect of the project, is the managing agent of the body corporate in respect of the project.

(3) Where an offence against this Act for which a person incurs liability because of subsection (1) is in fact the act or omission of an employee or other agent of the person, that first person shall be taken to have committed the offence and be liable accordingly despite any instructions given by the person or the limitation of authority conferred on such employee or agent.

Time for commencement of proceedings

123. A prosecution for an offence against this Act shall be commenced at any time within 1 year after the matter of complaint arose or within 6 months after the matter of complaint comes to the knowledge of the

Director, whichever period is the later to expire.

Liability for offence by body corporate

124.(1) Where an offence against this Act is committed by a body corporate, then, without derogating from section 7 of the Criminal Code, each of the following persons shall be taken to have committed the offence and, despite section 23 of the Criminal Code or any other rule of law or practice, to be criminally responsible for the act or omission concerned and may be charged with the offence and punished accordingly—

- (a) the person who at the time the offence is committed was the chairperson of directors, managing director or other governing officer by whatever name called or other member of the governing body of the body corporate by whatever name called;
- (b) every person who at the time the offence is committed manages or acts or takes part in the management, administration or government of the business in Queensland of the body corporate.

(2) This section applies so as not to limit or affect the liability of a body corporate to be proceeded against and punished for an offence against this Act committed by it.

(3) It is a defence to a charge of an offence against this Act brought against a person specified in subsection (1)(a) or (b) to prove that the offence was committed without that person's consent or connivance and that the person exercised due diligence to prevent the commission of the offence.

Representation of parties at hearing

125.(1) On the hearing or determination of any proceedings under this Act whether before a Court or the Commission or an Industrial Magistrate, a party which is an industrial union may be represented by a member or officer and any party may be represented by the party's agent properly appointed in writing in that behalf.

(2) A party may be represented by counsel or solicitor in proceedings before the Court with the consent of all parties to the proceedings, or by leave of the Court.

(3) Unless all parties consent, a party shall not be represented by counsel or solicitor in any proceedings before the Commission or before an Industrial Magistrate.

(4) This section shall not be construed as limiting the power of a Court or Commission to grant leave to a person in any matter to intervene in any matter before the Court or Commission, but that power shall not be exercised except in a case where the Court or, as the case may be, the Commission is of the opinion that it is desirable that a person be heard.

Power to forfeit on conviction

126.(1) Upon convicting a person of an offence against this Act that is committed in respect of any premises or part of premises, any plant, substance or thing the Industrial Magistrate may, whether or not application is made for an order, make an order that the premises or part of premises, plant, substance or thing be forfeited to the State.

(2) Any plant, substance or thing so forfeited shall be taken into possession on behalf of the Director and shall be disposed of as directed by the Director.

Power to order rectification

127.(1) Where a person is convicted of an offence against this Act the Industrial Magistrate may, in addition to imposing a penalty on the person, order that the person take steps to rectify the contravention in question to the satisfaction of an inspector within the time specified in the order.

(1A) The Industrial Magistrate may, on application made to the Industrial Magistrate, enlarge the time specified in such an order or may fix another time within which the order is to be complied with.

(2) When the Industrial Magistrate is minded to make an order under subsection (1) an Industrial Magistrate may adjourn the matter of penalty to be imposed until the expiration of the time to be specified in the order or of that time as later enlarged or until the expiration of another time later fixed, as the case requires, but in that event the offender shall not be punished if the offender has complied with the order by the expiration of the material time.

(3) Where an order is made under subsection (1), the offender shall not

be liable in respect of the continuance of the contravention during the time allowed by the Industrial Magistrate, but if at the expiration of the material time the offender has failed to comply with the order to rectify the offender commits a further offence against this Act.

Recovery of fees

128.(1) An amount of fees payable under this Act and not paid may be recovered—

- (a) by summary proceedings in a Magistrates Court under the *Justices Act 1886*; or
- (b) by action in a court of competent jurisdiction as for a debt due and owing to the person in whose name the action is brought;

upon the complaint or, as the case may be, plaint of the Director or of a person authorised by the Minister or by the Director.

(2) Proceedings for the recovery of fees may be taken, heard and determined—

- (a) within any division of the Brisbane District appointed under the *Decentralisation of Magistrates Courts Act 1965*; or
- (b) within, or within 35 km of, the boundary of the Magistrates Courts District where the inspection or other service or act in respect of which the fees are payable was made, rendered or done.

Forgery of certificates etc.

129.(1) A person shall not—

- (a) forge any authority, certificate, permit, notice, record, approval, exemption or any other document required or permitted by this Act to be issued or held for any purpose; or
- (b) use or deal with or induce another to use, deal with or act upon any such document required or permitted by this Act to be issued or held for any purpose knowing the same to have been forged; or
- (c) use or deal with or induce another to use, deal with or act upon as applying to any person any such document required or permitted by this Act to be issued or held for any purpose knowing the

same not to apply to that person; or

- (d) impersonate a person named in any such document required or permitted by this Act to be issued or held for any purpose; or
- (e) hold himself or herself out as an inspector unless the person is appointed under this Act as an inspector; or
- (f) hold himself or herself out as a health and safety officer or representative for a workplace unless the person is appointed or elected as such for a workplace under this Act; or
- (g) connive at a contravention of paragraph (a) to (f); or
- (h) make a false entry in any register, book, record, notice, direction, certificate, permit, authority or other writing required or permitted by this Act to be made, kept, exhibited, given, issued or held, knowing the same to be false.

(2) For the purposes of subsection (1)—

“**forge**” has the meaning assigned to that term by section 486 of the Criminal Code.

Protection of persons administering Act

130. Neither the Crown, the Minister, a person who is a member of a board of reference or an Appeals Tribunal under this Act, an inspector nor any other person shall incur any liability because of anything done genuinely and without negligence for the purposes of this Act for damage or injury alleged to arise because of the thing.

Facilitation of proof

131.(1) In any proceedings under and for the purposes of this Act—

- (a) it shall not be necessary to prove the appointment of the Director or an inspector or other officer or the authority of an inspector to do any act or to issue any order or to give any direction or notice or to make any request or take any proceeding, but this shall not prejudice the right of any defendant to prove the facts or the extent of such authority; and
- (b) a signature purporting to be that of the Minister or of the Director

or of any other inspector shall be taken to be the signature it purports to be until the contrary is proved; and

- (c) a document purporting to be signed by an inspector and stating that, at a specified time, a place specified in such manner as reasonably permits of identification was or was not a workplace or was or was not within a prescribed category of workplace, or stating that any approval of an inspector was or was not given, shall, upon its production in evidence, be evidence of the matter contained in the document, and, in the absence of evidence to the contrary, shall be conclusive evidence of such matter; and
- (d) a document purporting to be either an original or duplicate copy of any certificate, order, approval, permit, requisition, exemption, authority, special standard or notice, issued, granted or set under this Act by the Minister or by the Director or by any other inspector shall, upon its production in that proceeding, be evidence and, in the absence of evidence to the contrary, conclusive evidence of that certificate, order, approval, permit, requisition, exemption, authority, special standard or notice; and
- (e) a certificate purporting to be signed by the Director certifying—
 - (i) as to the receipt or otherwise of a notice, application or payment; or
 - (ii) that an amount of fees or another amount payable under this Act is due and owing by a specified person and has not been paid; or
 - (iii) that an inspection was made or a service has been rendered; or
 - (iv) that an offence against this Act came to the Director's knowledge on the date specified in the certificate;shall, upon its production in that proceeding, be evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained in that certificate; and
- (f) a document purporting to be signed by the Director stating that at a specified time or during a specified period there was or was not in force any certificate, order, approval, permit, authority, requisition, exemption or notice under this Act as described in the

document granted, as given or made to a specified person or class of persons or in respect of a specified thing and that the approval, permit or authority was or was not subject to the terms, conditions or restrictions set out in the document shall upon its production in those proceedings be evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained in the document; and

- (g) every provision of this Act relevant to the proceeding shall be presumed to apply with respect to any plant the subject of the proceedings in the absence of evidence to the contrary; and
- (h) the authority of an inspector or other officer of the Government to do any act or take any proceeding shall be presumed in the absence of evidence to the contrary; and
- (i) an allegation on averment in a complaint—
 - (i) that any premises are or that any act, matter or thing was done or omitted within a specified district; or
 - (ii) that any plant has been designed, manufactured, imported, supplied, erected or installed by any person; or
 - (iii) that any substance has been manufactured, imported, supplied, stored or produced by any person; or
 - (iv) that the person named in the complaint is, or was at the time specified, the owner, occupier, employer or principal contractor in respect of any premises;

shall be evidence and, in the absence of evidence to the contrary, conclusive evidence of that matter; and

- (j) a document or booklet purporting to be published by or under the authority of the Standards Association of Australia shall, upon its production in those proceedings be evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters appearing on and in that document or booklet; and
- (k) a certificate purporting to be signed by the Director, endorsed upon or annexed to a document or booklet of a kind referred to in paragraph (j) stating that any standard or code of practice contained in that document or booklet was in force on a specified date or during a specified period of time, shall be evidence and, in

the absence of evidence to the contrary, conclusive evidence that such standard or, as the case may be, code of practice was in force at the date or, as the case may be, during the period so specified; and

- (l) a certificate purporting to be signed by a person authorised to grant it shall, upon its production in that proceeding, be evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained in that certificate; and
- (n) it shall not be necessary to prove the limits of any local authority area or any part of any local authority area, or radius or other prescribed place, or that any road or place is within any local authority area or radius or other prescribed place, or that any place alleged to be a road or public place or any particular part of a road or public place is a road or public place or part of a road or public place, or the authority of the Director or of any inspector to do any act or take any proceedings, but this shall not prejudice the right of any defendant to adduce evidence in relation to those matters; and
- (o) a document purporting to be signed by an inspector and stating that at a specified time an application for the renewal of registration of a place as a workplace was or was not made in respect of a place specified in the document in such manner as reasonably permits of identification shall, upon its production in evidence, be evidence of the matter contained in the document and in the absence of evidence to the contrary shall be conclusive evidence of such matter; and
- (p) a document purporting to be signed by an inspector and stating that at a specified time a notice in writing of the vacating of a workplace or of a business carried on at specified premises was or was not lodged in respect of the premises or, as the case may be, a business specified in the document in such manner as reasonably permits of identification shall, upon its production in evidence, be evidence of the matter contained in the document and in the absence of evidence to the contrary shall be conclusive evidence of such matter.

(2) This section does not prejudice or in any way affect other means of proving the elements of an alleged offence.

PART 11—RECOVERY OF PENALTIES BY NOTICES**Penalties exacted by way of notice to offender**

132.(1) When an inspector finds a person committing an offence against the regulations and, having regard to—

- (a) the type of offence concerned; and
- (b) the place where the offence happens; and
- (c) the circumstances in which the offence happens, the inspector believes that proceedings under this section are adequate, the inspector may, upon ascertaining the true name and usual place of residence of the offender, give the offender the notice specified in subsection (2).

(2) The notice—

- (a) shall be identified by a serial number; and
- (b) shall identify the person to whom it is given by the person's true name and usual place of residence; and
- (c) shall state in general terms the offence which the person has been found committing; and
- (d) shall inform the person in general terms that if the person does not desire the matter to be determined in a court hearing the person may complete the form attached to or appearing upon the notice and may forward or deliver that form together with a prescribed sum by way of penalty to the person named in the form within the time appointed in the notice (which shall be not less than 10 days from the date of the giving of the notice) and the person will not be liable to further penalty or costs in the matter; and
- (e) shall inform the person in general terms that the person has the right to decline to proceed in the manner described in paragraph (d) and to allow the matter to be determined in a court hearing if the person—
 - (i) desires to contest the question whether the offence alleged was in fact committed; or

(ii) wishes to submit to the court matters in extenuation of penalty; or

(iii) for any other reason;

in which event the person need not reply or take further action in respect of the notice and that in such case court process will issue against the person in due course.

(3) Where a person to whom a notice is given under subsection (1) proceeds in the manner described in subsection (2)(d) within the time appointed in the notice, a proceeding against the person by way of prosecution for the offence alleged in the notice shall not be competent, but otherwise such a proceeding may be commenced as if the notice had not been given.

PART 12—MISCELLANEOUS

Non-disclosure of information by member of Council or committee, inspector or other officer

133. A person who is a member of the Council or a member of an industry workplace health and safety committee appointed for the purposes of this Act, an inspector or any other officer appointed for the purposes of this Act shall not disclose to any person any information that the person has acquired in the exercise of the person's functions for the purpose of this Act except—

- (a) to a person or class of person authorised by the Minister or Director, either generally or specifically, to receive that information; or
- (b) in the course of carrying out the person's approved duties; or
- (c) to a lawfully constituted court or tribunal.

Director may grant exemptions from regulations etc.

134.(1) The Director may by notice, on conditions or unconditionally—

- (a) exempt any person or class of persons from compliance with, or any plant, substance or method of work or any class of plant, substance or method of work from the application, in whole or in part, of the regulations; or
- (b) vary, in whole or in part, the regulations so far as may apply to any such person, class of persons, substance or plant;

if the Director is satisfied that—

- (c) compliance with the regulations in respect of the person or class of persons, plant, substance or method of work is not practicable; or
- (d) the security or safety of the plant, substance or method of work will not be adversely affected; or
- (e) the employer concerned has effected a health and safety management policy and training programs which in the opinion of the Director satisfy the intent of the regulations.

(2) The Director may revoke or modify any exemption or variation granted or made under subsection (1) or the conditions attaching to any such exemption or variation.

(3) A notice under subsection (1) is subordinate legislation.

Director may set special standards

135.(1) For the purposes of this section—

“dangerous situation” means the happening of an incident or the existence of a state of affairs that creates or is likely to create a danger of serious bodily injury to any person or a dangerous occurrence or a danger to public health and safety arising from workplace activities.

(2) If at any time the Minister is of the opinion, on reasonable grounds, that a dangerous situation has arisen or is likely to arise within or near any workplace the Director, with the approval of the Minister, may set special standards to apply in or near that workplace or in or near any class or classes of workplace to which that workplace, in the opinion of the Minister, belongs, in the State or in any area or areas of the State.

(3) Special standards may be set under this section for the purpose of providing a remedy for any dangerous situation by prescribing methods of

work or particular standards to be achieved in the circumstances in question or any method of operation in respect of any specified plant or a standard to be achieved in respect of that specified plant.

(4) Special standards set under this section shall expire after a period of 1 year from the date of the publication of those standards in the Industrial Gazette and shall, on their expiry, cease to have force or effect.

(5) The power of the Director to set special standards under this section includes the power, with the approval of the Minister, to amend or revoke such standards.

(6) Special standards set under subsection (2) must be observed by persons in, on or about every workplace to which the special standards apply with a view to the protection of the health and safety of persons affected by the operation of any of those workplaces.

(7) Every special standard set under this section is to be published in the Industrial Gazette and shall, on publication, until it expires or is sooner revoked—

(a) be judicially noticed; and

(b) be applicable to the same extent and have the same force as if it were a regulation made under this Act.

(8) Where there is any inconsistency between a special standard set under this section and any existing standard, code of practice or regulation under this Act, the special standard shall prevail.

(9) A person who contravenes a special standard set under this section commits an offence against this Act.

(10) A special standard under this section is subordinate legislation.

Approved methods of work

136.(1) An employer or principal contractor may apply in writing to the Director for approval to carry out work by a method other than that prescribed.

(2) The Director may, if satisfied with the health and safety measures to apply in connection with the method of work proposed for approval under subsection (1), grant the approval and may subject the approval to such conditions as the Director thinks fit.

(3) An employer or principal contractor shall not carry out, or cause to be carried out, work where the method by which the work is to be carried out is prescribed other than—

- (a) in accordance with the prescribed method; or
- (b) where the Director has upon the application made to the Director under subsection (1), approved another method, in accordance with that method and any conditions to which the grant of approval is subject.

Regulations

137.(1) The Governor in Council may make regulations for the purposes of this Act.

(2) Without limiting the generality of subsection (1), the regulations—

- (a) may provide that, on conditions or unconditionally, persons, matters or things, or a class of persons, matters or things may be exempted from the provisions of the regulations and for the revocation of any exemption or conditional exemption so granted; and
- (b) may adopt wholly or partly and specifically or by reference and with any alteration, amendment, modification or variation any of the standards, rules, codes, specifications or notices of any association, body or institution whether as in force at the time of adoption or as amended; and
- (c) may provide for the method of carrying out work and the rights, powers, duties and obligations and practices of persons in, on or about workplaces in respect of matters which might affect the health or safety of such persons or members of the public; and
- (d) may provide for the rights, powers, duties, obligations and practices of owners of projects, workplaces and plant, substances and things, and of owners, manufacturers, importers and suppliers of plant in respect of matters which might affect the health or safety of employees, persons other than employees or members of the public; and
- (e) may provide for the regulation by the Director of access to and

movement on, or across the whole or part of workplaces, by persons or classes of persons or by vehicles or classes of vehicles, and for the powers of inspectors in relation to those matters; and

- (f) may provide for the regulation and control by the Director, by means of conspicuous and legible notices, fences or barriers, the access to and use of workplaces or any part of workplaces by persons and vehicles or any class or description of persons and vehicles, and for the powers of inspectors in relation to those matters; and
- (g) may provide for regulation and control of the use of plant and for the manufacture, storage, keeping, supply, use and production of substances; and
- (h) may provide for the rights, powers, duties, obligations and practices of owners, designers, manufacturers, importers, suppliers, erectors or installers of any plant of a kind specified in the Schedule 3; and
- (i) may provide for categories of workplaces under and for the purposes of this Act and for regulating the work performed in workplaces; and
- (j) may provide for the regulation and control by the Director of applications for registrations and renewals of registration under this Act of all or any workplaces, and of all or any plant, including all or any plant specified under the Schedule 3; and
- (k) may prescribe the form of registers to be kept for the purposes of this Act, may prescribe the mode of effecting registrations under this Act, may prescribe the information of particulars to be entered in such registers and may provide for all or any matters considered necessary or desirable in relation to those registers; and
- (l) may provide for and regulate and control approvals to commence erection of buildings and the granting or issuing of certificates or other authorities under this Act and for the prescribing of conditions and restrictions subject to which such certificates and other authorities shall be granted or issued; and
- (m) may regulate and control the provision, alteration, replacement or

- dealing with amenities in any workplace, and provide for submission to the Director of the particulars, plans and specifications of such amenities, and may provide such provision, alteration, replacement or dealing be subject to prior approval; and
- (n) may provide for categories of employers, principal contractors, manufacturers, importers and suppliers under and for the purposes of this Act and for regulating the work performed by persons in any such category; and
 - (o) may provide for the submission to the Director by the manufacturer of any plant, or any class or classes of plant, or by the person who installs any plant or both such manufacturer and installer, of details of any such plant, and may provide that the installation of any such plant be subject to prior approval or registration; and
 - (p) may provide for categories of persons including children and young persons and may provide for the manner of employment of any persons or category of persons; and
 - (q) may provide for the matters for which charges and fees (“**charges**”) are payable for the purposes of this Act, the amounts of charges, the persons who are liable to pay or receive charges, when charges are payable, the waiver of charges and the recovery of unpaid amounts of charges; and
 - (qa) may provide for the matters for which allowances, costs and expenses are payable for the purposes of this Act;
 - (r) may provide for the forms to be used for the purposes of this Act and the particular purposes for which those forms shall respectively be used; and
 - (s) may provide for the penalties that may be imposed for contravention of the regulations not exceeding—
 - (i) in the case of a body corporate—100 penalty units; or
 - (ii) of a person other than a body corporate—30 penalty units; and
 - (t) may provide for the grant (with or without condition) of permits, certificates and authorities (“**licences**”) under this Act, prerequisites (including eligibility and educational standards that

are to be met by applicants) for the grant of licences, circumstances in which exemptions from meeting prerequisites may be given, and the surrender, transfer, renewal, revocation, cancellation, suspension or endorsement of licences; and

- (u) may provide for the practice and procedure upon all appeals instituted under this Act that are not otherwise prescribed, and provide for the award of costs in appeals and the recovery of such costs awarded; and
- (v) may provide for the qualifications, experience and duties of accredited officers and the standards to be met by persons examined by accredited officers; and
- (w) may make provision with respect to examinations for persons applying for accreditation; and
- (x) may provide for regulating and controlling accredited persons for the maintenance, construction, testing or inspection of plant; and
- (y) may provide for the medical examination of employees including the collection of biological samples.

Existing instruments

138.(1) An order in council in force under section 8 immediately before the commencement of this section continues to have effect after the commencement and may be repealed or amended as if it were a regulation.

(2) An instrument in force under section 16, 19(1), 34, 58(1), 134(1) or 135 immediately before the commencement of this section continues to have effect after the commencement, and may be amended and repealed as if it were an instrument of the type now specified in the provision.

(3) A regulation in force under this Act immediately before the commencement of this Act, continues to have effect after the commencement, as if it had been made under this Act as in force immediately after the commencement.

SCHEDULE 3

SPECIFIED PLANT

sections 24–25

Airconditioning units

Amusement devices

Cylinders within the ambit of Australian Standard 2030

Escalators

Lifts

ENDNOTES**1 Index to Endnotes**

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2 Date to which amendments incorporated

This is the day mentioned in section 5(c) of the *Reprints Act 1992*. Accordingly, this reprint includes all amendments that commenced operation before 9 December 1992. Future amendments of the *Workplace Health and Safety Act 1989* may be made in accordance with this reprint because of section 49 of the *Reprints Act 1992*.

3 List of legislation**Workplace Health and Safety Act 1989 No. 63**

date of assent 12 May 1989

ss 1–2 commenced on date of assent

ss 6, 36–57 commenced 10 June 1989 (proc pubd Ind Gaz 10 June 1989 p 216)

remaining provisions commenced 31 July 1989 (proc pubd Ind Gaz 29 July 1989 p 770)

as amended by—

Workplace Health and Safety Act and Other Acts Amendment Act 1990 No. 94**Part 3**

date of assent 7 December 1990

ss 1–2 commenced on date of assent

ss 4, 7 commenced 13 May 1991 (see s 2(2))

remaining provisions commenced 22 December 1990 (proc pubd Ind Gaz 22 December 1990 p 1159)

Statute Law (Miscellaneous Provisions) Act 1991 No. 97 s 3 Sch 1

date of assent 17 December 1991

commenced on date of assent

Statute Law (Miscellaneous Provisions) Act 1992 (No. 2) No. 68 s 3 Sch 1

date of assent 7 December 1992

commenced on date of assent

4 List of annotations

Key to abbreviations in list of annotations

RA	=	<i>Reprints Act 1992</i>
amd	=	amended
ins	=	inserted
om	=	omitted
renum	=	renumbered
sub	=	substituted
Chap	=	Chapter
Pt hdg	=	Part heading
Div hdg	=	Division heading
Sdiv hdg	=	Subdivision heading
hdg prec	=	heading preceding
prov hdg	=	provision heading
cl	=	clause
prev	=	previous
pres	=	present

Provisions not included in reprint, or amended by amendments not included in reprint, are underlined

Long title amd 1992 No. 68 s 3 Sch 1

Application of Act

s 4 amd 1990 No. 94 ss 6, 7

Interpretation

s 6 amd 1990 No. 94 s 8; 1992 No. 68 s 3 Sch 1
 def **“airconditioning unit”** ins 1990 No. 94 s 8(a)(i)
 amd 1991 No. 97 s 3 Sch 1
 def **“amenities”** sub 1990 No. 94 s 8(a)(ii)
 def **“Authority”** om 1990 No. 94 s 8(a)(iii)
 def **“child”** om 1990 No. 94 s 8(a)(iv)
 def **“Crown”** amd 1992 No. 68 s 3 Sch 1
 def **“Director”** sub 1990 No. 94 s 8(a)(v)
 def **“function”** sub 1992 No. 68 s 3 Sch 1
 def **“industrial magistrate”** om 1991 No. 97 s 3 Sch 1
 def **“inspector”** sub 1990 No. 94 s 8(a)(vii)
 def **“Minister”** om 1991 No. 97 s 3 Sch 1
 def **“owner”** amd 1992 No. 68 s 3 Sch 1
 def **“personal protective equipment”** ins 1991 No. 97 s 3 Sch 1
 def **“plant”** sub 1991 No. 97 s 3 Sch 1
 def **“premises”** sub 1991 No. 97 s 3 Sch 1
 def **“project”** sub 1990 No. 94 s 8(a)(x)
 amd 1992 No. 68 s 3 Sch 1
 def **“workplace”** amd 1990 No. 94 s 8(a)(xi)
 def **“young person”** om 1990 No. 94 s 8(a)(xii)

Objects of the Act

s 7 amd 1990 No. 94 s 9

Act not to apply in certain circumstances

s 8 amd 1991 No. 97 s 3 Sch 1
 sub 1992 No. 68 s 3 Sch 1

Employers to ensure health and safety of their employees

s 9 amd 1990 No. 94 s 10

Persons in control of workplaces etc. used by non-employees to ensure health and safety

s 11 amd 1991 No. 97 s 3 Sch 1

Duties of employees

s 13 amd 1990 No. 94 s 11

Director may designate projects

s 16 sub 1992 No. 68 s 3 Sch 1

Principal contractor in respect of project

s 18 amd 1991 No. 97 s 3 Sch 1

Director may prescribe notifiable projects

s 19 amd 1992 No. 68 s 3 Sch 1

Duty under this Division is additional to other duties

s 26 sub 1992 No. 68 s 3 Sch 1

Notification of serious bodily injury, work-related illness or dangerous occurrence to be given

s 28 amd 1991 No. 97 s 3 Sch 1

Scene not to be interfered with

s 30 sub 1992 No. 68 s 3 Sch 1

Codes of practice

s 34 amd 1992 No. 68 s 3 Sch 1

PART 4—COUNCIL

Pt hdg amd 1990 No. 94 s 12

Authority

s 36 om 1990 No. 94 s 13

Membership of the Council

s 38 sub 1990 No. 94 s 14
 amd 1992 No. 68 s 3 Sch 1

Vacation of office

s 41 amd 1990 No. 94 s 15

Appointment of deputy members

s 43 amd 1990 No. 94 s 16; 1992 No. 68 s 3 Sch 1

Entitlements of members of Council

s 45 amd 1990 No. 94 s 17; 1992 No. 68 s 3 Sch 1

Functions of Workplace Health and Safety Council

s 46 amd 1990 No. 94 s 18

Minister may establish committees

s 47 amd 1990 No. 94 s 19

Term of appointment of committee member

s 50 amd 1990 No. 94 s 20

Entitlements of members of industry workplace health and safety committees

s 57 amd 1992 No. 68 s 3 Sch 1

Health and safety officers

prov hdg sub 1991 No. 97 s 3 Sch 1

s 58 amd 1990 No. 94 s 21; 1992 No. 68 s 3 Sch 1

Qualifications of health and safety officer

s 61 amd 1990 No. 94 s 22

Nomination or election of health and safety representative

s 62 amd 1990 No. 94 s 23

Establishment of health and safety committees

s 71 amd 1992 No. 68 s 3 Sch 1

Delegation

s 76 sub 1992 No. 68 s 3 Sch 1

Annual report

s 77 amd 1990 No. 94 s 24

Powers of inspectors

s 81 amd 1990 No. 94 s 25

Inspector's power of seizure

s 84 amd 1990 No. 94 s 26

Consequences of seizure

s 85 amd 1990 No. 94 s 27; 1992 No. 68 s 3 Sch 1

Appeal against prohibition or seizure notice

s 93 sub 1990 No. 94 s 28

Order to secure compliance with notices etc.

s 94 sub 1990 No. 94 s 29

Appeals Tribunal

s 95 amd 1990 No. 94 s 30; 1992 No. 68 s 3 Sch 1

Secretary to Appeals Tribunal

s 102 sub 1990 No. 94 s 31

Certificate, permit or authority required for work in certain occupations

s 109 sub 1990 No. 94 s 32

Director's power to exempt

s 110 amd 1992 No. 68 s 3 Sch 1

Entitlements of members of boards of reference

s 116 amd 1992 No. 68 s 3 Sch 1

Proceedings in respect of offences

s 120 amd 1990 No. 94 s 33

Power to forfeit on conviction

s 126 amd 1992 No. 68 s 3 Sch 1

Protection of persons administering Act

s 130 prov hdg amd 1991 No. 97 s 3 Sch 1

Facilitation of proof

s 131 amd 1990 No. 94 s 34

Director may grant exemptions from regulations etc.

s 134 amd 1990 No. 94 s 35; 1992 No. 68 s 3 Sch 1

Director may set special standardss 135 sub 1990 No. 94 s 36
amd 1992 No. 68 s 3 Sch 1**Regulations**

s 137 amd 1990 No. 94 s 37; 1992 No. 68 s 3 Sch 1

Existing instruments

s 138 sub 1992 No. 68 s 3 Sch 1

Publication and tabling of proclamations

s 139 om 1992 No. 68 s 3 Sch 1

PART 13—AMENDMENT OF FACTORIES AND SHOPS ACT 1960

Pt 13 (ss 140–154) om (see s 40 RA)

REPEALED PROVISIONS

Sch 1 om (see s 40 RA)

Sch 2 om (see s 40 RA)

5 Table of renumbered provisionsTABLE OF RENUMBERED PROVISIONS
under section 43 of *Reprints Act 1992*

Original	Renumbered as
33(2) (2nd sentence)	33(2A)
33(2A) (2nd sentence)	33(2B)
39(1) (2nd sentence)	39(1A)
43(2) (2nd sentence)	43(2A)
47(1) (2nd sentence)	47(1A)
47(2) (2nd sentence)	47(3)
49(2) (2nd sentence)	49(2A)
58(2) (2nd sentence)	58(2A)
59(1)	59

71(2) (2nd sentence)	71(2A)
78 (1st sentence)	78(1)
78 (2nd sentence)	78(2)
79(1) (2nd sentence)	79(1A)
92(2) (2nd sentence)	92(2A)
95(2)(b)(ii)(C)	95(2)(b)(ii)(A)
95(2)(b)(ii)(D)	95(2)(b)(ii)(B)
95(2)(b)(iii)(E)	95(2)(b)(iii)(A)
95(2)(b)(iii)(F)	95(2)(b)(iii)(B)
101(1) (2nd sentence)	101(1A)
114(3) (2nd sentence)	114(3A)
120(1) (2nd sentence)	120(1A)
120(2) (2nd sentence)	120(2A)
122(1) (2nd sentence)	122(1A)
126 (1st sentence)	126(1)
126 (2nd sentence)	126(2)
127(1) (2nd sentence)	127(1A)