

Queensland



WORKPLACE HEALTH AND SAFETY ACT 1995

**Reprinted as in force on 18 January 1996
(includes amendments up to Act No. 57 of 1995)**

Reprint No. 2

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Information about this reprint

This Act is reprinted as at 18 January 1996. The reprint—

- shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c))
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind (Reprints Act 1992 s 5(d)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 mentioned in the following list have also been made to—

- use expressions consistent with current drafting practice (s 29)
- use aspects of format and printing style consistent with current drafting practice (s 35)
- omit provisions that are no longer required (s 37).

This page is specific to this reprint. See previous reprint for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

Also see endnotes for information about—

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

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WORKPLACE HEALTH AND SAFETY ACT 1995

[as amended by all amendments that commenced on or before 18 January 1996]

An Act to promote and protect freedom from disease or injury to persons caused, and risk of disease or injury to persons created, by workplaces, workplace activities and certain plant, and for related purposes

PART 1—PRELIMINARY

Division 1—Introduction

Short title

1. This Act may be cited as the *Workplace Health and Safety Act 1995*.

Division 2—Application and operation of Act

Application of Act

- 3.(1) This Act does not apply to—
 - (a) a mine to which the *Coal Mining Act 1925* applies; or
 - (b) a mine to which the *Mines Regulation Act 1964* applies; or
 - (c) land that is used for the obtaining, mining or conveying of petroleum under the *Petroleum Act 1923*.
- (2) This Act does not limit the application of the following Acts—
 - *Explosives Act 1952*

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- *Public Safety Preservation Act 1986*
- *Radioactive Substances Act 1958*
- *Traffic Act 1949*
- *Transport Operations (Marine Safety) Act 1994.*

(3) However, a person on whom an obligation is imposed under part 3 must discharge the obligation by meeting the standard of workplace health and safety required under this Act even though another Act, other than an Act mentioned in subsection (1), may prescribe a lesser standard to discharge the obligation.

Act binds all persons

4. This Act binds all persons, including the State and, so far as the legislative power of the Parliament permits, the Commonwealth and the other States.

What does this Act apply to?

5. This Act applies to all workplaces, workplace activities and specified high risk plant.

Who does this Act apply to?

6. This Act applies to—
- (a) everyone who may affect the health and safety of others because of workplaces, workplace activities or specified high risk plant; and
 - (b) everyone whose health and safety may be affected by workplaces, workplace activities or specified high risk plant.

Division 3—Overall object of Act

Freedom from disease or injury and risk of disease or injury

7.(1) The overall object of this Act is to ensure freedom from disease or

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injury to persons caused, and risk of disease or injury to persons created, by workplaces, workplace activities or specified high risk plant (“**workplace health and safety**”).

(2) The object is mainly to be achieved by—

- (a) establishing a workplace health and safety council and industry committees;¹ and
- (b) electing workplace health and safety representatives and establishing workplace health and safety committees;² and
- (c) appointing workplace health and safety officers;³ and
- (d) making workplace health and safety compliance standards;⁴ and
- (e) making workplace health and safety advisory standards;⁵ and
- (f) promoting community awareness about workplace health and safety; and
- (g) imposing workplace health and safety obligations on certain persons who may affect the health and safety of others by their acts or omissions;⁶ and
- (h) appointing inspectors; and
- (i) enforcement procedures.⁷

¹ See part 6 (Industry consultative arrangements).

² See part 7 (Workplace consultative arrangements).

³ See part 8 (Workplace health and safety officers).

⁴ Workplace health and safety compliance standards are standards made under this Act that must be complied with. They provide protection from prosecution if followed.

⁵ Workplace health and safety advisory standards are standards made under this Act that provide practical advice about workplace health and safety issues. They also provide protection from prosecution if followed.

⁶ See part 3 (Workplace health and safety obligations).

⁷ See part 9 (Inspectors).

Division 4—Interpretation***Subdivision 1—Dictionary*****Definitions—the dictionary**

8. The dictionary in schedule 3 defines particular words used in this Act.⁸

Subdivision 2—Other important terms**What is a “workplace”?**

9.(1) A “**workplace**” is any place where work is, is to be, or is likely to be, performed by a worker, self-employed person or employer.

Examples of subsection (1)—

1. A construction workplace.
2. A vessel used for teaching members of the public to scuba dive.
3. A vehicle supplied by an employer for use by a worker in the performance of work.

(2) A place may be a “**workplace**” even though it does not have to be registered or notified as a workplace under a regulation.

Example of subsection (2)—

If the construction of a building for which the estimated final price at practical completion is less than the amount prescribed under a regulation, the construction does not have to be notified. Nevertheless, the place where the building is being constructed is a workplace for this Act.

Who is an “employer”?

10.(1) An “**employer**” is a person who, in the course of the person’s business or undertaking, engages someone else to do work, other than under a contract for service, for or at the direction of the person.

⁸ In some Acts, definitions are contained in a dictionary that appears as the last schedule and forms part of the Act—*Acts Interpretation Act 1954*, section 14.

(2) For this section, a person **“engages someone else”** to do work even though the person engaged works on a voluntary basis.

Who is a “worker” and who is not?

11.(1) A person is a **“worker”** if the person does work, other than under a contract for service, for or at the direction of an employer.

Example of subsection (1)—

A subcontractor works under a contract for service and is not a worker for this Act.

(2) A person may be a **“worker”** even though the person is not paid for work done by the person.

Example of subsection (2)—

A person works for a hospital on a voluntary basis and not as a member of a hospital auxiliary. The hospital supplies the person with materials, a workplace and a uniform. The work is performed only in the way the hospital directs and the person’s services may be ended by the hospital. The person is a worker.

(3) However, a person is not a **“worker”** merely because the person does work for an organisation of which the person is a member.

Example of subsection (3)—

A person is a member of a voluntary association (a lifesaving club). The person (the **“lifesaver”**) is rostered to perform lifesaving duties with an employed lifeguard at a beach. The lifesaver is not a worker.

Who is a “self-employed person”?

12. A **“self-employed person”** is a person who—

- (a) performs work for gain or reward; and
- (b) is not an employer or worker.

Who is the “principal contractor”?

13.(1) The **“principal contractor”** for a construction workplace (other than a construction workplace for domestic premises) is—

- (a) the person appointed as principal contractor by the owner of the workplace; or

(b) if no principal contractor is appointed—the owner of the workplace.

(2) The **“principal contractor”** for a construction workplace for domestic premises is the person in control of building or demolition work at the workplace.

(3) However, the owner of a construction workplace for domestic premises cannot be the principal contractor for the workplace unless the owner is in control of the building work and holds an owner-builder permit for the work.

(4) In this section—

“owner”, of a construction workplace for domestic premises, means an individual who resides or intends to reside at the premises.

“owner-builder permit” has the meaning it has in the *Queensland Building Services Authority Act 1991*.

What is a **“construction workplace”**?

14.(1) A **“construction workplace”** is a workplace where building work, civil construction work or demolition work (**“construction work”**) is done.⁹

(2) A workplace becomes a construction workplace from the beginning of the day when construction work starts at the workplace.

(3) A workplace stops being a construction workplace—

(a) when the construction work at the workplace is finished and possession of the workplace is returned to the owner of the workplace; or

(b) if the owner remains in possession of the workplace while the work is done—when the construction work at the workplace is finished.

(4) In this section—

“building work” does not include the construction of a mobile home or

⁹ “Building work”, “civil construction work” and “demolition work” are terms defined in the dictionary.

prefabricated building—

- (a) if the construction is done at the workplace where the home or building is manufactured; and
- (b) the home or building is intended to be transported to another place outside the workplace.

When is plant or a substance not “used properly”?

15. Plant or a substance is not “used properly” if it is used without regard to available appropriate information or advice about its use.

PART 2—BASIC CONCEPTS

Division 1—Being at work and performing work

When is a worker at work?

16. A worker is at work only if the worker is at the worker’s workplace or at another workplace at the worker’s employer’s direction.

When is a self-employed person performing work?

17.(1) A self-employed person performs work only during the time the person devotes to work as a self-employed person.

(2) However, a self-employed person does not stop devoting time to work merely because the person interrupts the performance of work for a short time.

Examples—

1. A self-employed professional wood turner leaves the lathe to take a tea break. The tea break is part of the time devoted to the work.

2. A computer consultant who works from home stops working to take a lunch break. The lunch break is part of the time devoted to work.

Division 2—Consultation

What is consultation?

18.(1) Consultation is about fostering cooperation and developing partnerships between government, employers and workers to ensure workplace health and safety.

(2) Consultation is an important strategy in achieving workplace health and safety and happens in 2 ways—

- (a) at an industry level through establishing workplace health and safety council and industry committees under part 6; and
- (b) at the workplace level through the election by workers of workplace health and safety representatives and establishing workplace health and safety committees under part 7.

Division 3—Compliance standards, advisory standards, regulations and the difference between them

Compliance standards

19.(1) Compliance standards are standards made by the Governor in Council for workplace health and safety.

(2) Compliance standards prohibit, or prescribe ways to prevent or minimise, exposure to risk.¹⁰

Examples of subsection (2)—

1. A compliance standard for noise may state a level of noise exposure that must not be exceeded. The standard may be silent on the way the required outcome is to be achieved or it may require that the outcome be achieved by taking stated action.

2. A compliance standard about asbestos may state things that must or must not be done when working with asbestos.

¹⁰ For the use of compliance standards in the discharge of workplace health and safety obligations, see section 26.

For the use of compliance standards as defences, see section 37.

Advisory standards

20.(1) Advisory standards are standards made by the Minister that give practical advice on ways to be used to identify and manage exposure to risk for workplace health and safety.

Example of subsection (1)—

An advisory standard about noise exposure may provide advice on identifying sources and levels of noise, assessing actual or potential exposure to noise and eliminating or minimising noise exposure as a risk to health at the workplace.

(2) However, a person may adopt another way, more suited to the person's undertaking, for identifying and managing exposure to risk for workplace health and safety.¹¹

Example of subsection (2)—

An advisory standard is made about the exposure to risks to health and safety from the use of machinery and equipment at work. The standard states ways to eliminate vibration risks that cause back injury. The employer is unable to implement these ways for a particular item of machinery. However, the employer takes reasonable precautions and exercises proper diligence to prevent back injury by implementing other ways of isolating a worker from the vibration. The employer therefore meets the employer's obligation for workplace health and safety so far as it relates to exposure to risk of back injury for the worker.

Regulations

21. Regulations are made by the Governor in Council and deal with, among other things, registration of workplaces and plant, the issue of certificates to operate certain industrial equipment and other matters of an administrative nature.

Division 4—Ensuring workplace health and safety

How should workplace health and safety be ensured?

22. Workplace health and safety should be ensured by—

¹¹ For the use of advisory standards in the discharge of workplace health and safety obligations, see section 26.
For the use of advisory standards as defences, see section 37.

- (a) identifying hazards; and
- (b) assessing risks that may result because of the hazards; and
- (c) deciding on control measures to prevent, or minimise the level of, the risks; and
- (d) implementing control measures; and
- (e) monitoring and reviewing the effectiveness of the measures.

PART 3—WORKPLACE HEALTH AND SAFETY OBLIGATIONS

Division 1—Preliminary

Obligations for workplace health and safety

23.(1) The following persons have obligations under division 2 for workplace health and safety—

- employers
- self-employed persons
- persons in control of workplaces
- principal contractors
- designers, manufacturers, importers and suppliers of plant
- erectors and installers of certain plant
- manufacturers, importers and suppliers of substances
- owners of specified high risk plant.

(2) Workers and other persons at workplaces have obligations under division 3 for workplace health and safety.

Discharge of obligations

24.(1) A person on whom a workplace health and safety obligation is imposed must discharge the obligation.

Maximum penalty—400 penalty units or 6 months imprisonment.

(2) Subsection (1) applies despite Criminal Code, sections 23 and 24.¹²

Person may owe obligations in more than 1 capacity

25. A person on whom a workplace health and safety obligation is imposed may be subject to more than 1 workplace health and safety obligation.

Example—

A person may be an employer, principal contractor and supplier of plant at the same time for a single workplace and be subject to obligations in each of the capacities.

How obligations can be discharged if standard made

26.(1) If a compliance standard prescribes a way of preventing or minimising exposure to a risk, a person may discharge the person's workplace health and safety obligation for exposure to the risk only by following the prescribed way.

(2) If a compliance standard prohibits exposure to a risk, a person may discharge the person's workplace health and safety obligation for exposure to the risk only by ensuring the prohibition is not contravened.

(3) If an advisory standard states a way or ways of identifying and managing exposure to a risk, a person discharges the person's workplace health and safety obligation only by—

- (a) adopting and following a stated way that identifies and manages exposure to the risk; or

¹² Section 23 of the Code deals with a person's criminal responsibility for an act or omission that happens independently of the person's will or for an event which is accidental. Section 24 of the Code deals with a person's criminal responsibility for an act or omission done under an honest and reasonable, but mistaken, belief in the state of things.

- (b) adopting and following another way that identifies and manages exposure to the risk.¹³

How obligations can be discharged if no standard made

27.(1) This section applies if there is not a compliance standard prescribing a way to prevent or minimise exposure to a risk, or an advisory standard stating a way to identify and manage the risk.

(2) The person may choose any appropriate way to discharge the person's workplace health and safety obligation for exposure to the risk.

(3) However, the person discharges the workplace health and safety obligation for exposure to the risk only if the person takes reasonable precautions, and exercises proper diligence, to ensure the obligation is discharged.

Division 2—Obligations of employers and others

Obligations of employers

28.(1) An employer has an obligation to ensure the workplace health and safety of each of the employer's workers at work.

(2) Also, an employer has an obligation to ensure his or her own workplace health and safety and the workplace health and safety of others is not affected by the way the employer conducts the employer's undertaking.

Obligations of self-employed persons

29. A self-employed person has an obligation to ensure his or her own workplace health and safety and the workplace health and safety of others is not affected by the way the person conducts the person's undertaking.

¹³ For this section and the following section, see the defences provided under division 4.

Obligations of persons in control of workplaces

30.(1) A person in control of a workplace has the following obligations—

- (a) to ensure the risk of disease or injury from a workplace is minimised for persons coming onto the workplace to work;
- (b) to ensure the risk of disease or injury from any plant or substance provided by the person for the performance of work by someone other than the person's workers is minimised when used properly;
- (c) to ensure there is appropriate, safe access to and from the workplace for persons other than the person's workers.

(2) For this section—

“**person in control**” of a workplace does not include the occupier of domestic premises.

Obligations of principal contractors

31.(1) A principal contractor has the following obligations for a construction workplace—

- (a) to ensure the orderly conduct of all work at the construction workplace to the extent necessary—
 - (i) to ensure workplace health and safety at the workplace; and
 - (ii) to assist the discharge of workplace health and safety obligations of an employer or self-employed person;
- (b) to ensure that plant and substances at the workplace for which no other person is presently responsible are safe and without risk of disease or injury to persons at the workplace;
- (c) to ensure that workplace activities at the workplace are safe and without risk of disease or injury to members of the public at or near the workplace;
- (d) to provide safeguards and take safety measures prescribed under a compliance standard made for principal contractors.

(2) In addition, the principal contractor has the obligation mentioned in

subsection (3) if the principal contractor reasonably believes, or should reasonably believe—

- (a) an employer at the workplace is not discharging the employer's workplace health and safety obligation; or
- (b) a self-employed person at the workplace is not discharging the person's workplace health and safety obligation.

(3) The principal contractor must—

- (a) direct the employer or self-employed person to comply with the employer's or self-employed person's workplace health and safety obligation; and
- (b) if the employer or self-employed person fails to comply with the direction—direct the employer or self-employed person to stop work until the employer or self-employed person agrees to comply with the obligation.

(4) For subsection (1)(b), no other person is presently responsible for plant or a substance if the plant or substance has been provided for the general use of persons at the construction workplace.

Obligations of designers, manufacturers, importers and suppliers of plant

32.(1) A designer or importer of plant or specified high risk plant for use at a relevant place¹⁴ has an obligation to ensure the plant is designed to be safe and without risk to health when used properly.

(2) A manufacturer or importer of plant or specified high risk plant for use at a relevant place has an obligation to ensure that the plant is constructed to be safe and without risk to health when used properly.

(3) A designer, manufacturer or importer of plant or specified high risk plant for use at a relevant place has an obligation to ensure that the plant undergoes appropriate levels of testing and examination to ensure compliance with the obligations imposed by subsections (1) and (2).

(4) Also, a designer, manufacturer, importer or supplier of plant or specified high risk plant for use at a relevant place has the following

¹⁴ "Relevant place" is a term defined in the dictionary.

obligations—

- (a) to take all reasonable steps to ensure appropriate information about the safe use of the plant is available;
- (b) to take the action the chief executive¹⁵ reasonably requires to prevent the use of unsafe plant anywhere.¹⁶

Example of subsection (4)(b)—

The chief executive may require a designer, manufacturer, importer or supplier of plant to recall the plant to prevent its use.

(5) For subsection (4)(a), information is “**appropriate**” if the information states—

- (a) the use for which the plant has been designed and tested; and
- (b) the conditions (if any) that must be followed if the plant is to be used safely and without risk to health.

Obligations of erectors and installers of plant or specified high risk plant

33. An erector or installer of plant or specified high risk plant at a relevant place has an obligation—

- (a) to erect or install the plant in a way that is safe and without risk to health; and
- (b) to ensure that nothing about the way the plant was erected or installed makes it unsafe and a risk to health when used properly.

Obligations of manufacturers, importers and suppliers of substances for use at workplaces

34.(1) A manufacturer or importer of a substance for use at a workplace has the following obligations—

- (a) to ensure the substance is safe, and without risk to health, when

¹⁵ “Chief executive” is a term defined under the *Acts Interpretation Act 1954*—see sections 33 and 36 of that Act.

¹⁶ For the chief executive’s power to make the requirement, see section 185.

used properly;

- (b) to ensure the substance undergoes appropriate levels of testing and examination to comply with the obligation imposed by paragraph (a).

(2) Also, a manufacturer, importer or supplier of a substance for use at a workplace has the following obligations—

- (a) to ensure that appropriate information about the safe use of the substance is available;
- (b) to take the action the chief executive reasonably requires to prevent the use of an unsafe substance at a workplace.

Example of subsection (2)(b)—

The chief executive may require a manufacturer, importer or supplier of a substance to recall the substance to prevent its use.

(3) For subsection (2)(a), information is “**appropriate**” if the information clearly identifies the substance and states—

- (a) the precautions (if any) to be taken for the safe use of the substance; and
- (b) the health hazards (if any) associated with the substance; and
- (c) the results of any tests carried out for the substance that are relevant to its safe use.

Obligations of owners of specified high risk plant

35. An owner of specified high risk plant¹⁷ has an obligation to ensure that the owner’s plant is maintained in a condition that ensures the plant is safe, and without risk to health, when used properly.

¹⁷ “Specified high risk plant” is listed in schedule 2. Generally, it is plant that may impact on the health and safety of the general public. It includes amusement devices and escalators.

Division 3—Obligations of workers and other persons**Obligations of workers and other persons at a workplace**

36. A worker or anyone else at a workplace has the following obligations at a workplace—

- (a) to comply with the instructions given for workplace health and safety at the workplace by the employer at the workplace and, if the workplace is a construction workplace, the principal contractor for workplace health and safety at the workplace;
- (b) for a worker—to use personal protective equipment if the equipment is provided by the worker’s employer and the worker is properly instructed in its use;
- (c) not to wilfully or recklessly interfere with or misuse anything provided for workplace health and safety at the workplace;
- (d) not to wilfully place at risk the workplace health and safety of any person at the workplace;
- (e) not to wilfully injure himself or herself.

Division 4—Defences**Defences for div 2 or 3**

37.(1) It is a defence in a proceeding against a person for a contravention of an obligation imposed on the person under division 2¹⁸ or 3¹⁹ for the person to prove—

- (a) if a compliance standard has been made about the way to prevent or minimise exposure to a risk—that the person followed the way prescribed in the standard to prevent the contravention; or
- (b) if an advisory standard has been made stating a way or ways to identify and manage exposure to a risk—

¹⁸ Division 2 (Obligations of employers and others)

¹⁹ Division 3 (Obligations of workers and other persons)

- (i) that the person adopted and followed a stated way to prevent the contravention; or
- (ii) that the person adopted and followed another way that identified and managed exposure to the risk and took reasonable precautions and exercised proper diligence to prevent the contravention; or
- (c) if no compliance or advisory standard has been made about exposure to a risk—that the person chose any appropriate way and took reasonable precautions and exercised proper diligence to prevent the contravention.

(2) Also, it is a defence in a proceeding against a person for an offence against division 2 or 3 for the person to prove that the commission of the offence was due to causes over which the person had no control.

(3) In this section, a reference to a standard is a reference to a standard in force at the time of the contravention.

PART 4—COMPLIANCE STANDARDS

Division 1—Compliance standards

Compliance standards

38.(1) The Governor in Council may make a compliance standard for workplace health and safety to prohibit, or prescribe a way to prevent or minimise, exposure to risk from workplaces, workplace activities or specified high risk plant.

(2) A compliance standard is subordinate legislation.

Division 2—Special compliance standards**Special compliance standards**

39.(1) This section applies if the Minister considers that—

- (a) a situation has arisen or is likely to arise at or near a workplace because of work or a workplace activity; and
- (b) because of the situation, there is, or is likely to be, a risk of serious bodily injury²⁰ to persons, or serious risk to health and safety of the public.

(2) The Minister may make a special compliance standard about the situation.

(3) Without limiting subsection (2), the special compliance standard may prescribe methods of work or other things to prevent or minimise the risk from the situation.

(4) A special compliance standard expires—

- (a) 1 year from the day it is notified in the gazette; or
- (b) on an earlier day stated in the standard.

(5) However, a regulation may extend the operation of the standard for a further period of not more than 1 year.

(6) If a special compliance standard is inconsistent with a compliance standard, advisory standard or regulation, the special compliance standard prevails to the extent of the inconsistency.

(7) A special compliance standard is subordinate legislation.

²⁰ “Serious bodily injury” is a term defined in the dictionary.

PART 5—ADVISORY STANDARDS

Purpose of advisory standards

40. An advisory standard may be made for workplace health and safety stating ways to identify and manage exposure to risk from workplaces, workplace activities or specified high risk plant.

Advisory standards

41.(1) The Minister may make advisory standards.

(2) The Minister must notify the making of an advisory standard.

(3) The Minister must ensure that a copy of each advisory standard and any document applied, adopted or incorporated by the standard is made available for inspection, without charge, during normal business hours at each department office dealing with workplace health and safety.

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

Use of advisory standards in proceedings

42. An advisory standard is admissible in evidence in a proceeding under this Act if—

- (a)** the proceeding relates to a contravention of an obligation imposed on a person under part 3; and
- (b)** it is claimed the person contravened the obligation by failing to identify and manage exposure to a risk; and
- (c)** the advisory standard is about identifying and managing the exposure to the risk.

PART 6—INDUSTRY CONSULTATIVE ARRANGEMENTS

Division 1—Purposes of part

Purposes of part

43. The purposes of this part are—

- (a) to establish the workplace health and safety council; and
- (b) to provide for the establishment of industry committees.

Division 2—The council and its functions

Workplace health and safety council

44. The Workplace Health And Safety Council (the “**council**”) is established.

Functions of council

45.(1) The primary function of the council is to give advice and make recommendations to the Minister about promoting and protecting workplace health and safety.

(2) When making a recommendation to the Minister, the council must have regard to—

- (a) the estimated cost to government and industry of implementing the recommendation; and
- (b) the benefits to workplace health and safety that might reasonably be expected to flow from implementing the recommendation.

(3) Without limiting subsection (1), the council may seek to discharge its primary function by—

- (a) reviewing the appropriateness of provisions of this Act; and
- (b) examining the appropriateness of standards, including draft

- standards; and
- (c) examining recommendations from industry committees; and
 - (d) referring issues to appropriate industry committees for examination and report; and
 - (e) examining proposals for research into issues about workplace health and safety; and
 - (f) reviewing the types and number of industry committees and the membership of the committees; and
 - (g) examining proposals put forward by educational authorities and entities for courses about workplace health and safety to be integrated into educational programs; and
 - (h) promoting community knowledge of, and awareness about, workplace health and safety; and
 - (i) reviewing or examining another issue referred to it by the Minister.

Division 3—Membership and conduct of council proceedings

Membership of council

46.(1) The council consists of the following 14 members—

- (a) the chief executive, who is the chairperson;
- (b) 2 other members representing government;
- (c) 4 members representing employers;
- (d) 4 members representing workers;
- (e) 3 members each of whom is an expert in workplace health and safety or a representative of community interests.

(2) The members, other than the chairperson, are to be appointed by the Minister.

(3) The Minister must seek to appoint both men and women members to the council.

Times of council meetings

- 47.(1)** The council may hold its meetings when it decides.
- (2)** However, the council must meet at least 4 times a year.
- (3)** The chairperson of the council—
- (a)** may call a meeting of the council at any time; and
 - (b)** must call a meeting if asked by at least a quarter of the other members.
- (4)** Also, the Minister may call a meeting of the council at any time.

Conduct of proceedings

- 48.(1)** The chairperson of the council presides at all council meetings at which the chairperson is present.
- (2)** If the chairperson is absent, the member chosen by the members present is to preside.
- (3)** At a meeting of the council—
- (a)** a quorum is at least 7 members and must include members representing government, employers and workers; and
 - (b)** a question is decided by a majority of the votes of the members present and voting; and
 - (c)** each member present has a vote on each question to be decided and, if the votes are equal, the member presiding has a casting vote.
- (4)** The council may otherwise conduct its proceedings (including its meetings) as it considers appropriate.
- (5)** The council may hold meetings, or permit members to take part in meetings, by telephone, closed-circuit television or another form of communication.
- (6)** A member who takes part in a council meeting under a permission under subsection (5) is taken to be present at the meeting.
- (7)** A resolution is a valid resolution of the council, even though it is not passed at a council meeting, if—

- (a) at least half the members give written agreement to the resolution; and
- (b) notice of the resolution is given under procedures approved by the council.

Disclosure of interests

49.(1) If a member reasonably believes, or should reasonably believe, that an issue being considered or about to be considered by the council may give the member, or an entity associated with the member, a possible professional or commercial advantage, the member must disclose the possible advantage to the council.

(2) The disclosure must be recorded in the council's minutes and, unless the council otherwise directs, the member must not be present when the council considers the issue, or take part in a decision of the council on the issue.

(3) If, because of this section, a member is not present at a meeting of the council for the deliberation of the council about an issue, but there would be a quorum if the member were present, the remaining members present are a quorum for the council's deliberation or decision about the issue at the meeting.

(4) For this section, an entity is "**associated with**" a member if the member is an employee or member of, or an adviser to, the entity.

Minutes

50. The council must keep minutes of its proceedings.

Division 4—Provisions about appointed council members

Application of division

51. This division applies to a council member other than the chief executive.

Duration of appointment

52.(1) The appointment of a member is for the term (not longer than 3 years) decided by the Minister.

(2) The office of a member becomes vacant if—

- (a) the member resigns by signed notice of resignation given to the Minister; or
- (b) the member is found guilty of an indictable offence or an offence against this Act; or
- (c) the member is absent, without the Minister's leave and without reasonable excuse, from 3 consecutive ordinary meetings of the council; or
- (d) the member's appointment is ended by the Minister under subsection (3).

(3) The Minister may, at any time, end the appointment of a member for any reason or none.

Leave of absence

53.(1) The Minister may approve a leave of absence for a member.

(2) If a leave of absence is approved, the Minister may appoint someone else as an acting member during the member's approved leave of absence.

(3) The Minister must have regard to the council's membership requirements under section 46 when appointing someone as an acting member.

Conditions of appointment

54.(1) A member is appointed on a part-time basis.

(2) A member is entitled to be paid the remuneration and allowances fixed by the Minister.

*Division 5—Industry committees***Industry committees**

55. For this Act, the Minister may establish and maintain industry committees.

Functions of industry committees

56.(1) The primary function of an industry committee is to give advice and make recommendations to the Minister or the council about promoting and protecting workplace health and safety in the industry or industries for which the committee is established (the “**relevant industry**”).

(2) When making a recommendation to the Minister or council, the industry committee must have regard to—

- (a) the estimated cost to government and industry of implementing the recommendation; and
- (b) the benefits to workplace health and safety that might reasonably be expected to flow from implementing the recommendation.

(3) Without limiting subsection (1), the industry committee may seek to discharge its primary function by—

- (a) consulting widely in the relevant industry, and finding out the views of employers and workers on workplace health and safety issues in the industry; and
- (b) considering those views, and making recommendations to the Minister or council about workplace health and safety in the industry; and
- (c) participating in initiatives to improve workplace health and safety in the industry; and
- (d) reviewing and making recommendations to the Minister or the council about workplace health and safety legislation; and
- (e) examining all issues about workplace health and safety for the industry and making recommendations to the Minister or council; and

- (f) examining, investigating and reporting on any workplace health and safety issue referred to it by the Minister or council.

Division 6—Membership and conduct of industry committee proceedings

Membership of industry committee

57.(1) An industry committee consists of the following members—

- (a) the chairperson;
- (b) 1 member representing the department;
- (c) 4 members representing employers in the industry for which the committee is established;
- (d) 4 members representing workers in the industry for which the committee is established;
- (e) 2 members who are experts in workplace health and safety;
- (f) the number of other members decided by the Minister.

(2) The chairperson must not be the member representing the department or a departmental officer.

(3) An expert member must not be a departmental officer.

(4) The Minister must seek to appoint both men and women members to the industry committee.

Times of industry committee meetings

58.(1) An industry committee may hold its meetings when it decides.

(2) However, the committee must meet at least 4 times a year.

(3) The chairperson of the committee—

- (a) may call a meeting of the committee at any time; and
- (b) must call a meeting if asked by at least a quarter of the other members.

(4) Also, the Minister may call a meeting of the committee at any time.

Conduct of industry committee proceedings

59.(1) The chairperson of an industry committee presides at all meetings of the committee at which the chairperson is present.

(2) If the chairperson is absent, the member chosen by the members present is to preside.

(3) At a meeting of the committee—

- (a)** a quorum is at least half the members appointed and must include members representing the department, employers and workers; and
- (b)** a question is decided by a majority of the votes of the members present and voting; and
- (c)** each member present has a vote on each question to be decided and, if the votes are equal, the member presiding has a casting vote.

(4) An industry committee may otherwise conduct its proceedings (including its meetings) as it considers appropriate.

(5) An industry committee may hold meetings, or permit members to take part in meetings, by telephone, closed-circuit television or another form of communication.

(6) A member who takes part in an industry committee meeting under a permission under subsection (5) is taken to be present at the meeting.

(7) A resolution is a valid resolution of an industry committee, even though it is not passed at an industry committee meeting, if—

- (a)** at least half the members give written agreement to the resolution; and
- (b)** notice of the resolution is given under procedures approved by the industry committee.

Disclosure of interests

60.(1) If a member reasonably believes, or should reasonably believe, that an issue being considered or about to be considered by the industry committee may give the member, or an entity associated with the member, a possible professional or commercial advantage, the member must disclose

the possible advantage to the committee.

(2) The disclosure must be recorded in the industry committee's minutes and, unless the committee otherwise directs, the member must not be present when the committee considers the issue, or take part in a decision of the committee on the issue.

(3) If, because of this section, a member is not present at a meeting of the industry committee for the deliberation of the committee about an issue, but there would be a quorum if the member were present, the remaining members present are a quorum for the committee's deliberation or decision about the issue at the meeting.

(4) For this section, an entity is “**associated with**” a member if the member is an employee or member of, or an adviser to, the entity.

Minutes

61. An industry committee must keep minutes of its proceedings.

Division 7—Provisions about industry committee members

Duration of appointment

62.(1) The appointment of a member is for the term (not longer than 3 years) decided by the Minister.

(2) The office of a member becomes vacant if—

- (a) the member resigns by signed notice of resignation given to the Minister; or
- (b) the member is found guilty of an indictable offence or an offence against this Act; or
- (c) the member is absent, without the Minister's leave and without reasonable excuse, from 3 consecutive ordinary meetings of the committee; or
- (d) the member's appointment is ended by the Minister under subsection (3).

(3) The Minister may, at any time, end the appointment of a member for any reason or none.

Leave of absence

63.(1) The Minister may approve a leave of absence for a member.

(2) If a leave of absence is approved, the Minister may appoint someone else as an acting member during the member's approved leave of absence.

(3) The Minister must have regard to the committee's membership requirements under section 57 when appointing someone as an acting member.

Conditions of appointment

64.(1) A member is appointed on a part-time basis.

(2) A member is entitled to be paid the remuneration and allowances fixed by the Minister.

PART 7—WORKPLACE CONSULTATIVE ARRANGEMENTS

Division 1—Purposes of part

Purposes of part

65. The purposes of this part are to provide—

- (a) for the election and entitlements of workplace health and safety representatives; and
- (b) the establishment of workplace health and safety committees; and
- (c) a process under which employers, principal contractors and workers identify and resolve issues affecting or that may affect the workplace health and safety of persons at workplaces.

Division 2—Definitions for part**Definitions for part**

66. In this part—

“co-workers” are workers who work at the same workplace for the same employer.

“union” means an association of employees registered, or taken to be registered, as an industrial organisation under the *Industrial Relations Act 1990*.

Division 3—Workplace health and safety representatives***Subdivision 1—Preliminary*****Who is a workplace health and safety representative?**

67.(1) A **“workplace health and safety representative”** is a worker at a workplace who is elected as a workplace health and safety representative by the worker’s co-workers at the workplace.

(2) An employer cannot appoint a workplace health and safety representative.

(3) A worker does not need any experience or qualification to be a workplace health and safety representative.

How many workplace health and safety representatives can a workplace have?

68. The workers at a workplace are entitled to elect 1 workplace health and safety representative for the workplace, but may, as a result of negotiations with their employer, elect more than 1 representative.

Workplace health and safety representative’s “area of representation”

69.(1) A workplace health and safety representative’s **“area of**

representation” is—

- (a) the workplace; or
- (b) if a workplace has more than 1 representative—the area of representation negotiated with the representative’s employer under section 70.

(2) A workplace health and safety representative may exercise an entitlement under this part only for the workplace or the part of the workplace within the representative’s area of representation.

Negotiation between workers and employer about workplace health and safety representatives

70.(1) Workers at a workplace may negotiate with their employer about workplace health and safety representatives for the workplace, including, for example—

- (a) the number of workplace health and safety representatives for the workplace; and
- (b) the extent to which the employer will facilitate the election of 1 or more workplace health and safety representatives for the workplace; and
- (c) if there is to be more than 1 workplace health and safety representative—each representative’s area of representation; and
- (d) the intervals at which a workplace health and safety representative is entitled to conduct inspections; and
- (e) access by the representative to training designed to help the representative in the exercise of the representative’s entitlements.

Examples of subsection (1)(c)—

1. All of the workplace during a particular time.
2. A particular area of the workplace.
3. A particular process done at the workplace.

(2) Workers may be represented during negotiations by the union of which they are members if they have told the employer that they want to be represented by their union.

(3) To remove any doubt, if the workers are members of more than 1 union, each of the unions asked may be involved in the negotiations.

Subdivision 2—Election process

Electing a workplace health and safety representative

71. The workers may elect a workplace health and safety representative on their own initiative or at their employer's suggestion.

Workers to tell employer of intention to elect workplace health and safety representative

72. If the workers decide to elect a workplace health and safety representative for the workplace, the workers—

- (a) must tell their employer of the decision; and
- (b) may tell a union that has members who are workers at the workplace of the decision.

Employer to facilitate election of workplace health and safety representative if asked

73.(1) An employer must, if asked by the employer's workers, facilitate an election of a workplace health and safety representative for the workplace.

(2) The employer must tell all the employer's workers at the workplace of the pending election within 28 days after being asked to facilitate it.

(3) The employer must facilitate the election within 2 months after being asked to do so.

Maximum penalty—10 penalty units.

(4) The employer complies with the requirement to facilitate an election if, at the least, the employer—

- (a) does not hamper the election process; and

- (b) allows the employer's workers to conduct the election at the workplace during ordinary working hours.

Workers may ask union to conduct election of workplace health and safety representative

74.(1) The workers may ask any union with members at the workplace to conduct the election of 1 or more workplace health and safety representatives for the workplace.

(2) However, if a union agrees to conduct the election, it must conduct it for all workers at the workplace.

Employers to be told of elected workplace health and safety representatives

75. A worker elected as a workplace health and safety representative must tell the worker's employer of the person's election as soon as practicable after being elected.

Subdivision 3—Employer's responsibilities

Employer must negotiate with workers if asked

76.(1) An employer must, if asked by the employer's workers, negotiate with the workers about workplace health and safety representatives for the workplace.²¹

Maximum penalty—10 penalty units.

(2) An employer must not exclude from the negotiations a union that has members who are workers at the workplace if the workers have told the employer that they want to be represented by the union.

Employer to help workplace health and safety representatives

77.(1) An employer must consult a workplace health and safety

²¹ Examples of some matters for negotiation may be found at section 70.

representative about proposed changes to the workplace, or plant or substances used at the workplace, that affect, or may affect, the workplace health and safety of persons at the workplace.

Maximum penalty—10 penalty units.

(2) An employer must permit a workplace health and safety representative to make inspections allowed under section 81(2) or any negotiated agreement.

Maximum penalty—10 penalty units.

(3) An employer must not obstruct access by a workplace health and safety representative to training for the representative agreed under section 70(1)(e).

Maximum penalty—10 penalty units.

Employer to tell workplace health and safety representatives about certain things

78.(1) An employer must tell each workplace health and safety representative at the employer's workplace about the following things if they are within the representative's area of representation—

- (a) any work injury, work caused illness or dangerous event happening at the workplace;
- (b) any proposed changes to the workplace, or plant or substances used at the workplace, that affect, or may affect, the workplace health and safety of persons at the workplace;
- (c) the presence of an inspector at the workplace if the representative is at the workplace;
- (d) a notice given by an inspector about a matter.

(2) The employer must tell each representative as soon as practicable after the thing comes to the employer's knowledge.

Employer to display identity of workplace health and safety representatives

79.(1) An employer must display a notice advising the identity of each

workplace health and safety representative for the workplace.

(2) The notice must be displayed within 5 days after the representative is elected.

Maximum penalty for subsection (2)—10 penalty units.

(3) If the workplace has only 1 workplace health and safety representative, a notice for the representative must be displayed in 1 or more conspicuous positions at the workplace in a way likely to come to the attention of workers at the workplace.

(4) If the workplace has more than 1 workplace health and safety representative, a notice for a representative must be displayed in a conspicuous position in the part of the workplace covered by the representative's area of representation in a way likely to come to the attention of workers in that part.

Employer to tell new workers and display notices about workplace health and safety representatives' provisions

80.(1) An employer must display in a conspicuous position at the workplace a notice in the approved form giving information about provisions under this division about workplace health and safety representatives.

Maximum penalty—10 penalty units.

(2) The employer must also tell new workers employed by the employer about workplace health and safety representatives and workplace health and safety committees for the workplace.

Maximum penalty—10 penalty units.

Subdivision 4—Entitlements and areas of responsibility

Entitlements of workplace health and safety representatives

81.(1) A workplace health and safety representative is entitled—

- (a) to inspect the workplace or the part of the workplace within the representative's area of representation; and

Workplace Health and Safety Act 1995

- (b) to be told by the representative's employer of any work injury, work caused illness or dangerous event happening at the workplace; and
- (c) if a workplace incident has happened and an employer wishes to interview a worker about the incident—to be present at the interview if the worker asks that the representative be present; and
- (d) to review circumstances surrounding work injuries, work caused illnesses and dangerous events told to the representative by the employer; and
- (e) to advise the employer of the results of the review and to make recommendations arising out of the review; and
- (f) to be consulted by the employer on any proposed change to the workplace, or plant or substances used at the workplace, that affects, or may affect, the workplace health and safety of persons at the workplace; and
- (g) to help in the resolution of workplace health and safety issues within the representative's area of representation; and
- (h) to be told by the employer of the presence of an inspector at the workplace if the representative is at the workplace; and
- (i) to report orally or in the approved form to the employer or workplace health and safety officer an issue that in the representative's opinion affects, or may affect, the workplace health and safety of persons at the workplace; and
- (j) to seek the employer's cooperation in remedying the issue and, if the issue is not remedied to the representative's satisfaction, to report the issue to an inspector; and
- (k) to report orally or in the approved form to an inspector an issue that—
 - (i) has been reported previously to the employer or workplace health and safety officer; and
 - (ii) has not been satisfactorily remedied within a reasonable time; and
- (l) to ask the employer to establish a workplace health and safety committee for the workplace; and

(m) to be a member of a workplace health and safety committee; and

(n) to exercise other entitlements prescribed under a regulation.

(2) Inspections may be conducted at weekly intervals or other intervals negotiated between the employer and the employer's workers.

(3) An employer must allow a workplace health and safety representative to exercise the representative's entitlements during the representative's ordinary working hours.

(4) Subsection (1)(k) does not limit the right of any other worker at the workplace to report to an inspector an issue that in the worker's opinion affects, or may affect, the workplace health and safety of persons at the workplace.

Subdivision 5—General

Election of a workplace health and safety representative not to diminish employer's obligations

82. An employer's workplace health and safety obligations are not diminished by—

- (a) the election of a workplace health and safety representative; or
- (b) any act or omission of a worker acting in the capacity of workplace health and safety representative.

Workplace health and safety representatives may be re-elected

83. A workplace health and safety representative is eligible for re-election.

Term as workplace health and safety representative

84. A worker elected as a workplace health and safety representative is a workplace health and safety representative for a term of 2 years from the day the worker was elected.

Ceasing to be a workplace health and safety representative

85. A worker stops being a workplace health and safety representative if the worker—

- (a) tells the worker's employer that the worker resigns as workplace health and safety representative; or
- (b) stops being a worker at the workplace.

Division 4—Workplace health and safety committees**Workplace health and safety committees**

86.(1) An employer or principal contractor may establish a workplace health and safety committee for a workplace.

(2) An employer or principal contractor must establish a workplace health and safety committee for a workplace if—

- (a) a workplace health and safety representative for the workplace asks the representative's employer or the principal contractor to establish a committee; or
- (b) for a workplace where work of a particularly hazardous nature is carried out—the chief executive directs by written notice given to the employer or principal contractor.

(3) An employer or principal contractor must establish the workplace health and safety committee within 28 days of the request or direction.

Maximum penalty—10 penalty units.

(4) However, if a workplace health and safety officer²² is appointed for a construction workplace, the principal contractor must establish the workplace health and safety committee within 7 days of the appointment.

Maximum penalty—10 penalty units.

(5) More than 1 committee may be established for a workplace.

²² For information about workplace health and safety officers, see part 8.

Membership of committee

87.(1) A workplace health and safety committee for a workplace consists of at least 2 members.

(2) The members are—

- (a)** any workplace health and safety officer and workplace health and safety representative for the workplace; and
- (b)** other members negotiated by—
 - (i)** for a workplace other than a construction workplace—the employer and the employer’s workers; and
 - (ii)** for a construction workplace—the principal contractor and workers at the workplace.

(3) A committee member must be an employer, principal contractor or worker at the workplace.

(4) At least half the committee members must be workers other than workers nominated by the employer or principal contractor.

(5) Workers may be represented during negotiations by the union of which they are members if they have told the employer or principal contractor that they want to be represented by their union.

(6) To remove any doubt, if the workers are members of more than 1 union, each of the unions asked may be involved in the negotiations.

Times of meetings

88.(1) Meetings of a workplace health and safety committee are to be held at the times it decides.

(2) The times the committee are to meet are issues to be negotiated between the employer or principal contractor and the committee members.

(3) However, the committee may meet during ordinary working hours at the workplace and must meet at least once every 3 months.

(4) Also, the committee must meet when asked by the member who is the workplace health and safety officer.

Proceedings at meetings

89. A workplace health and safety committee may conduct its proceedings in the way it decides.

Functions of workplace health and safety committees

90.(1) The primary function of a workplace health and safety committee is to assist cooperation between employer, principal contractor and worker in developing and carrying out measures to ensure workplace health and safety at a workplace.

(2) Also, a workplace health and safety committee may give information and advice to an employer or principal contractor about workplace health and safety.

(3) Without limiting subsection (1) and (2), a committee may seek to discharge its functions by—

- (a) encouraging and maintaining at the workplace an active interest in workplace health and safety; and
- (b) considering measures for training and educating persons at the workplace about workplace health and safety issues; and
- (c) telling workers about the formulation, review and distribution (in appropriate languages) of standards, rules and procedures about workplace health and safety at the workplace; and
- (d) reviewing the circumstances surrounding work injuries, work caused illnesses and dangerous events referred to the committee for review; and
- (e) telling the employer or principal contractor of the results of the review and making recommendations arising out of the review; and
- (f) helping in the resolution of issues about workplace health and safety at the workplace.

PART 8—WORKPLACE HEALTH AND SAFETY OFFICERS

Division 1—Purpose of part

Purpose of part

91. The purpose of this part is to provide for the appointment and functions of workplace health and safety officers.²³

Division 2—Definition for part

Meaning of “qualified person”

92. In this part—

“**qualified person**” means a person who holds a certificate of authority prescribed under a regulation for appointment as a workplace health and safety officer.

Division 3—Appointment of workplace health and safety officers

Appointment of workplace health and safety officer by employer

93.(1) An employer must appoint a qualified person as workplace health and safety officer for a workplace prescribed under a regulation if 30 or more workers are normally employed at the workplace.

Maximum penalty—20 penalty units.

Example of subsection (1)—

If, at a workplace, an employer normally employs 5 workers on Tuesdays, Wednesdays and Thursdays, but 30 workers in 3 shifts of 10 workers on Mondays and Fridays, the employer must appoint a workplace health and safety officer for the workplace if it is a workplace of a type prescribed under a regulation.

²³ For the meaning of “workplace health and safety officer” see the dictionary.

(2) Subsection (1) does not limit the ability of an employer to appoint a qualified person as a workplace health and safety officer for a workplace in other circumstances.

(3) An employer who is a qualified person may appoint himself or herself as workplace health and safety officer for the workplace.

(4) An employer may, with the chief executive's written approval, appoint a qualified person to be the workplace health and safety officer for more than 1 workplace if the person can reasonably perform the person's functions as workplace health and safety officer for each workplace.

(5) In this section—

“30 or more workers are normally employed at the workplace” means, during the current year, at least 30 workers are employed, or are likely to be employed, at the workplace for a total of any 40 days during the year.

Appointment of workplace health and safety officer by principal contractor

94.(1) A principal contractor must appoint a qualified person as workplace health and safety officer—

- (a) for a construction workplace—if 30 or more persons work at the workplace during any 24 hour period; or
- (b) if the principal contractor built at least 30 domestic premises during the previous financial year; or
- (c) in another circumstance prescribed under a regulation.

Maximum penalty—20 penalty units.

(2) Subsection (1) does not limit the ability of a principal contractor to appoint a qualified person as workplace health and safety officer in other circumstances.

(3) A principal contractor who is a qualified person may appoint himself or herself as workplace health and safety officer.

(4) A principal contractor may, with the chief executive's written approval, appoint a qualified person under subsection (1)(a) to be the workplace health and safety officer for more than 1 construction workplace

if the person can reasonably perform the person's functions as workplace health and safety officer for each workplace.

Division 4—Identity of workplace health and safety officer to be displayed

Employer and principal contractor to display identity of workplace health and safety officer

95.(1) An employer or principal contractor must display a notice advising the identity of the workplace health and safety officer for the workplace.

Maximum penalty—10 penalty units.

(2) The notice must be displayed within 5 days after the officer is appointed.

Maximum penalty—10 penalty units.

(3) The notice must be displayed in 1 or more conspicuous positions at the workplace in a way likely to come to the attention of workers at the workplace.

Maximum penalty—10 penalty units.

Division 5—Functions of workplace health and safety officers

Functions of workplace health and safety officers

96. A workplace health and safety officer has the following functions—

- (a) to tell the employer or principal contractor about the overall state of health and safety at the workplace;
- (b) to conduct inspections at the workplace to identify any hazards and unsafe or unsatisfactory workplace health and safety conditions and practices;
- (c) to report to the employer or principal contractor any hazard or unsafe or unsatisfactory workplace health and safety practice identified during inspections;

- (d) to establish appropriate educational programs in workplace health and safety;
- (e) to investigate, or assist the investigation of, all work injuries, work caused illnesses and dangerous events at the workplace;
- (f) to help inspectors in the performance of the inspectors' duties;
- (g) if any work injury, work caused illness, dangerous event or immediate risk to workplace health or safety at the workplace happens—to report the injury, illness, event or risk to the employer or principal contractor;
- (h) another function prescribed under a regulation.

Division 6—Employer's and principal contractor's responsibilities

Employer and principal contractor to help workplace health and safety officer etc.

97. An employer or principal contractor—

- (a) must provide information in the employer's or contractor's possession about risks to the workplace health and safety of workers and other persons from workplaces, workplace activities or specified high risk plant to the workplace health and safety officer; and
- (b) must include the workplace health and safety officer at any interview about workplace health and safety between the employer and a worker if the worker agrees; and
- (c) must consult the workplace health and safety officer on any proposed change to the workplace that affects, or may affect, workplace health and safety at the workplace; and
- (d) must help the workplace health and safety officer to seek appropriate advice on issues that affect, or may affect, workplace health and safety at the workplace; and
- (e) may instruct the workplace health and safety officer on action to be taken to ensure workplace health and safety at the workplace.

Division 7—Appointment of workplace health and safety officer not to diminish employer's obligations

Appointment of workplace health and safety officer not to diminish employer's obligations

98. An employer's or principal contractor's workplace health and safety obligations are not diminished by—

- (a) the appointment of a workplace health and safety officer; or
- (b) any act or omission of a person acting in the capacity of workplace health and safety officer.

PART 9—INSPECTORS

Division 1—Appointment

Appointment

99. The chief executive may appoint a person as an inspector if—

- (a) the chief executive considers the person has the necessary expertise or experience to be an inspector; or
- (b) the person has satisfactorily finished training approved by the chief executive.

Limitation of inspector's powers

100.(1) An inspector is subject to the chief executive's directions in exercising the inspector's powers.

(2) The powers of an inspector may be limited—

- (a) under a regulation; or
- (b) under a condition of appointment; or
- (c) by written notice given by the chief executive to the inspector.

Inspector's appointment conditions

101.(1) An inspector holds office on the conditions stated in the instrument of appointment.

(2) An inspector—

- (a) if the appointment provides for a term of appointment—ceases holding office at the end of the term; and
- (b) if the conditions of appointment provide—ceases holding office on ceasing to hold another office stated in the appointment conditions (the “**main office**”); and
- (c) may resign by signed notice of resignation given to the chief executive.

(3) However, an inspector may not resign from the office under this Act (the “**secondary office**”) if a term of employment to the main office requires the inspector to hold the secondary office.

Inspector's identity card

102.(1) The chief executive must give each inspector an identity card.

(2) The identity card must—

- (a) contain a recent photo of the inspector; and
- (b) be signed by the inspector; and
- (c) identify the person as an inspector for this Act.

(3) A person who stops being an inspector must return the person's identity card to the chief executive as soon as possible (but within 21 days) after the person stops being an inspector, unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

(4) This section does not prevent the giving of a single identity card to a person for this and other Acts or for other purposes.

Production or display of inspector's identity card

103.(1) An inspector may exercise a power in relation to someone else

only if—

- (a) the inspector first produces his or her identity card for the person's inspection; or
- (b) the inspector has the inspector's identity card displayed so it is clearly visible to the other person.

(2) However, if for any reason it is not practicable to comply with subsection (1) before exercising the power, the inspector must produce the identity card for inspection by the person at the first reasonable opportunity.

Division 2—Inspectors' general powers

Entry to places

104.(1) An inspector may enter a place only if—

- (a) it is a workplace; or
- (b) for a workplace on or near domestic premises—the entry is to land around the premises to gain access to the workplace; or
- (c) its occupier consents to the entry; or
- (d) the entry is authorised by a warrant.

(2) However, an inspector may, without the occupier's consent or a warrant, enter—

- (a) a public place; or
- (b) the land around premises to ask its occupier for consent to enter the premises.

(3) Also, before exercising a power under subsection (1)(b), the inspector must, if it is practicable to do so, first tell the occupier of the premises of the inspector's intention of gaining access to the workplace.

Consent to entry

105.(1) This section applies if an inspector intends to ask an occupier of a

place to consent to the inspector or another inspector entering the place.²⁴

(2) Before asking for the consent, the inspector must tell the occupier—

- (a) the purpose of the entry; and
- (b) that the occupier is not required to consent.

(3) If the consent is given, the inspector may ask the occupier to sign an acknowledgment of the consent.

(4) The acknowledgment must state—

- (a) the occupier was told—
 - (i) the purpose of the entry; and
 - (ii) that the occupier is not required to consent; and
- (b) the purpose of the entry; and
- (c) the occupier gives the inspector consent to enter the place and exercise powers under this part; and
- (d) the time and date the consent was given.

(5) If the occupier signs an acknowledgment of consent, the inspector must immediately give a copy to the occupier.

(6) Subsection (7) applies to a court if—

- (a) an issue arises, in a proceeding in or before the court, whether the occupier of a place consented to an inspector entering the place under this part; and
- (b) an acknowledgment under this section is not produced in evidence for the entry; and
- (c) it is not proved the occupier consented to the entry.

(7) The court may presume the occupier did not consent.

Warrants to enter

106.(1) An inspector may apply to a magistrate for a warrant for a place.

²⁴ This section does not apply if entry is authorised by section 104(1)(a), (b) or (d) or (2).

(2) The application must be sworn and state the grounds on which the warrant is sought.

(3) The magistrate may refuse to consider the application until the inspector gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

Example—

The magistrate may require additional information supporting the application to be given by statutory declaration.

(4) The magistrate may issue a warrant only if the magistrate is satisfied there are reasonable grounds for suspecting—

- (a) there is a particular thing or activity (the “**evidence**”) that may provide evidence of an offence against this Act; and
- (b) the evidence is, or may be within the next 7 days, at the place.

(5) The warrant must state—

- (a) that a stated inspector may, with necessary and reasonable help and force, enter the place and exercise the inspector’s powers under this part; and
- (b) the offence for which the warrant is sought; and
- (c) the evidence that may be seized under the warrant; and
- (d) the hours of the day or night when the place may be entered; and
- (e) the date, within 14 days after the warrant’s issue, the warrant ends.

Warrants—applications made other than in person

107.(1) An inspector may apply for a warrant by phone, fax, radio or another form of communication if the inspector considers it necessary because of—

- (a) urgent circumstances; or
- (b) other special circumstances, including, for example, the inspector’s remote location.

(2) Before applying for the warrant, the inspector must prepare an application stating the grounds on which the warrant is sought.

(3) The inspector may apply for the warrant before the application is sworn.

(4) After issuing the warrant, the magistrate must immediately fax a copy to the inspector if it is reasonably practicable to fax the copy.

(5) If it is not reasonably practicable to fax a copy to the inspector—

(a) the magistrate must—

(i) tell the inspector what the terms of the warrant are; and

(ii) tell the inspector the date and time the warrant was issued; and

(b) the inspector must complete a form of warrant (the “**warrant form**”) and write on it—

(i) the magistrate’s name; and

(ii) the date and time the magistrate issued the warrant; and

(iii) the terms of the warrant.

(6) The facsimile warrant, or the warrant form properly completed by the inspector, authorises the entry and the exercise of the other powers stated in the warrant issued by the magistrate.

(7) The inspector must, at the first reasonable opportunity, send to the magistrate—

(a) the sworn application; and

(b) if the inspector completed a warrant form—the completed warrant form.

(8) On receiving the documents, the magistrate must attach them to the warrant.

(9) Subsection (10) applies to a court if—

(a) an issue arises, in a proceeding in or before the court, whether a power exercised by an inspector was not authorised by a warrant issued under this section; and

(b) the warrant is not produced in evidence.

(10) The court must presume that the exercise of the power was not

authorised by a warrant issued under this section, unless the contrary is proved.

General powers after entering places

108.(1) This section applies to an inspector who enters a place.

(2) This section applies to an inspector who enters a place to get the occupier's consent only if the consent is given or the entry is otherwise authorised.

(3) For monitoring or enforcing compliance with this Act, the inspector may—

- (a) search any part of the place; or
- (b) inspect, measure, test, photograph or film any part of the place or anything at the place; or
- (c) take a thing at or a sample of or from a thing at the place; or
- (d) copy a document at the place; or
- (e) conduct surveys and tests to assess—
 - (i) the degree of risk existing at a workplace; or
 - (ii) standards of workplace health and safety existing at a workplace; or
- (f) inquire into the circumstances and probable causes of workplace incidents; or
- (g) take into or onto the place any persons, equipment and materials the inspector reasonably requires for exercising a power under this part; or
- (h) require the occupier of the place, or a person at the place, to give the inspector reasonable help to exercise the inspector's powers under paragraphs (a) to (g).

(4) A person required to give reasonable help under subsection (3)(h) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

(5) If the requirement is to be complied with by the person giving information, or producing a document (other than a document required to be kept by the person under this Act), it is a reasonable excuse for the person to fail to comply with the requirement, if complying with the requirement might tend to incriminate the person.

Power to seize evidence etc.

109.(1) An inspector who enters a workplace or, with the occupier's consent, another place under this division may seize a thing at the place if—

- (a) the inspector reasonably believes the thing is evidence of an offence against this Act; and
- (b) seizure of the thing is consistent with the purpose of entry as told to the occupier when asking for the occupier's consent.

(2) An inspector who enters a place with a warrant may seize the evidence for which the warrant was issued.

(3) An inspector may also seize anything else at the place if the inspector reasonably believes—

- (a) the thing is evidence of an offence against this Act; and
- (b) the seizure is necessary to prevent the thing being hidden, lost or destroyed or used to continue or repeat the offence.

(4) Also, an inspector may seize a thing if the inspector reasonably believes it has just been used in committing an offence against this Act.

Inspector's power to seize dangerous places and things

110. If an inspector who enters a workplace reasonably believes that the workplace, or part of the workplace, or plant or a substance at the workplace is defective or hazardous to a degree likely to cause serious bodily injury or work caused illness, the inspector may seize the place, part, plant or substance.

Powers supporting seizure

111.(1) Having seized a thing, an inspector may—

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- (a) move the thing from the place where it was seized (the “**place of seizure**”); or
- (b) leave the thing at the place of seizure but take reasonable action to restrict access to it; or
- (c) if the thing is plant—dismantle or cause to be dismantled stated plant.

Example of restricting access to a thing—

1. Sealing a thing and marking it to show access to it is restricted.
2. Sealing the entrance to a room where the seized thing is situated and marking it to show access to it is restricted.

(2) If an inspector restricts access to a seized thing, a person must not tamper, or attempt to tamper, with the thing or something restricting access to the thing without an inspector’s approval.

Maximum penalty—40 penalty units.

(3) To enable a thing to be seized, an inspector may require the person in control of it—

- (a) to take it to a stated reasonable place by a stated reasonable time; and
- (b) if necessary, to remain in control of it at the stated place for a reasonable time.

(4) The requirement—

- (a) must be made by notice in the approved form; or
- (b) if for any reason it is not practicable to give the notice, may be made orally and confirmed by notice in the approved form as soon as practicable.

(5) The person must comply with the requirement unless the person has a reasonable excuse for not complying.

Maximum penalty—40 penalty units.

(6) A further requirement may be made under this section in relation to the same thing if it is necessary and reasonable to make the further requirement.

Receipt for seized things

112.(1) As soon as practicable after an inspector seizes a thing, the inspector must give a receipt for it to the person from whom it was seized.

(2) However, if for any reason it is not practicable to comply with subsection (1), the inspector must leave the receipt in a conspicuous position and in a reasonably secure way at the place of seizure.

(3) The receipt must describe generally each thing seized and its condition.

(4) This section does not apply to a thing if it is impracticable or would be unreasonable to give the receipt required by the section (given the thing's nature, condition and value).

Forfeiture of seized things

113.(1) A seized thing is forfeited to the State if the inspector who seized the thing—

- (a) cannot find its owner after making reasonable inquiries; or
- (b) cannot return it to its owner, after making reasonable efforts; or
- (c) reasonably believes it is necessary to retain the thing to prevent it being used to commit an offence against this Act.

(2) Subsection (1)(a) does not require the inspector to make inquiries if it would be unreasonable to make inquiries to find the owner, and subsection (1)(b) does not require the inspector to make efforts if it would be unreasonable to make efforts to return the thing to its owner.

(3) If the inspector decides to forfeit a thing under subsection (1)(c), the inspector must tell the owner of the decision by written notice.

(4) Subsection (3) does not apply if—

- (a) the inspector cannot find its owner, after making reasonable inquiries; or
- (b) it is impracticable or would be unreasonable to give the notice.

(5) The notice must state—

- (a) the reasons for the decision; and

- (b) that the owner may apply within 28 days for the decision to be reviewed; and
- (c) how the owner may apply for the review; and
- (d) that the owner may apply for a stay of the decision if the owner applies for a review.

(6) In deciding whether and, if so, what inquiries and efforts are reasonable or whether it would be unreasonable to give notice about a thing, regard must be had to the thing's nature, condition and value.

Return of seized things

114.(1) If a seized thing has not been forfeited, the inspector must return it to its owner at the end of—

- (a) 6 months; or
- (b) if a proceeding for an offence involving it is started within 6 months—the proceeding and any appeal from the proceeding.

(2) Despite subsection (1), unless the thing has been forfeited, the inspector must immediately return a thing seized as evidence to its owner if the inspector stops being satisfied its continued retention as evidence is necessary.

Access to seized things

115.(1) Until a seized thing is forfeited or returned, an inspector must allow its owner to inspect it and, if it is a document, to copy it.

(2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.

Power to call police officer to help

116.(1) An inspector may call a police officer to help the inspector in the exercise of a power under this part.

(2) The police officer must give the inspector the reasonable help the inspector requires, if it is practicable to give the help.

Division 3—Improvement and prohibition notices**Improvement notice**

117.(1) This section applies if an inspector reasonably believes that a person—

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

(2) The inspector may, by notice (an “**improvement notice**”) given to the person, require the person to remedy—

- (a) the contravention or likely contravention; or
- (b) the things or operations causing the contravention or likely contravention.

(3) An improvement notice must state—

- (a) that the inspector believes the person—
 - (i) is contravening a provision of this Act; or
 - (ii) has contravened a provision in circumstances that make it likely that the contravention will continue or be repeated; and
- (b) the provision the inspector believes is being, or has been, contravened; and
- (c) briefly, how the provision is being contravened; and
- (d) the action the person must take to remedy the contravention or likely contravention; and
- (e) the day before which the person is required to remedy the contravention or likely contravention.

(4) The person must comply with the improvement notice.

Maximum penalty for subsection (4)—40 penalty units.

Prohibition notice

118.(1) This section applies if an inspector reasonably believes that

circumstances causing, or likely to cause, an immediate risk to workplace health and safety have arisen, or are likely to arise, in relation to a workplace, workplace activity, plant or substance.

(2) The inspector may direct the person in control of the workplace, workplace activity, plant or substance that caused, or is likely to cause, the circumstances to stop using, or allowing to be used, the workplace, plant or substance or to stop the activity.

Example—

A direction may be given requiring a person to stop selling, letting or hiring, lending or otherwise disposing of any plant or substance.

(3) The direction may be given orally, but must be confirmed by written notice (a “**prohibition notice**”) given to the person as soon as practicable.

(4) The person must comply with the direction or prohibition notice.

Maximum penalty—40 penalty units or 6 months imprisonment.

(5) Subsection (2) does not apply to an activity or procedure necessary to rectify the circumstances.

(6) A prohibition notice must state—

- (a) the inspector believes that circumstances causing, or likely to cause, an immediate risk to workplace health and safety have arisen, or are likely to arise, at a workplace; and
- (b) briefly, the circumstances that have caused or are likely to cause the risk; and
- (c) if the inspector believes the circumstances involve a contravention, or likely contravention, of a provision of this Act—the provision contravened or likely to be contravened; and
- (d) the circumstances (if any) under which the notice will be lifted.

(7) For this section, a person is “**in control**” of a workplace, workplace activity, plant or substance if the person has, or reasonably appears to have, authority to exercise control over the workplace, activity, plant or substance.

Order to secure compliance with notices

119.(1) This section applies if it appears to the chief executive—

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- (a) that a person to whom an inspector has issued an improvement or prohibition notice has contravened this Act by failing to comply with the notice; and
- (b) because of the failure, there is an imminent risk of serious bodily injury or work caused illness or of a dangerous event happening.

(2) The chief executive may make application in chambers to the Supreme Court for an order that the person comply with the notice.

(3) If the court is satisfied that there is an imminent risk of serious bodily injury or work caused illness or of a dangerous event happening because of the contravention, the court may make any order it considers appropriate in the circumstances.

(4) In addition to any other liability a person may incur for breach of the order, the person also commits an offence against this section.

Maximum penalty for subsection (4)—200 penalty units or 6 months imprisonment.

*Division 4—Other investigative powers***Power to require name and address**

120.(1) This section applies if—

- (a) an inspector finds a person committing an offence against this Act at a workplace; or
- (b) an inspector finds a person in circumstances that lead, or has information that leads, the inspector to reasonably suspect the person has just committed an offence against this Act at a workplace.

(2) The inspector may require the person to state the person's name and residential address.

(3) When making the requirement, the inspector must warn the person it is an offence to fail to state the person's name or residential address, unless the person has a reasonable excuse.

(4) The inspector may require the person to give evidence of the correctness of the stated name or address if the inspector reasonably

suspects the stated name or address is false.

(5) A person must comply with a requirement under subsection (2) or (4), unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

(6) The person does not commit an offence against subsection (5) if—

- (a) the person was required to state the person's name and address by an inspector who suspected the person had committed an offence against this Act; and
- (b) the person is not proved to have committed the offence.

(7) Without limiting section 116,²⁵ an inspector may ask a police officer to help with the enforcement of this section.

Steps police officer may take for failure to give name and address

121. A police officer may take the following steps if a person fails to comply with a requirement made by an inspector under section 120(2) or (4)—

- (a) the police officer may ask the person whether the person has a reasonable excuse for not complying with the requirement and, if the person gives an excuse, asks for details or further details of the excuse;
- (b) if the person does not answer the question or gives an excuse that the police officer reasonably believes is not a reasonable excuse, the officer may—
 - (i) tell the person that the officer is considering the arrest of the person for failing to comply with the requirement; and
 - (ii) require the person to state the person's name and residential address (or, if the person has no residential address, an address at which the person can most likely be contacted) and, if the officer reasonably suspects that the stated name or address is false, require the person to give evidence of the correctness of the stated name or address;

²⁵ Section 116 (Power to call police officer to help)

- (c) the police officer may arrest the person without a warrant if the officer reasonably believes—
 - (i) the person has not complied with a requirement of the officer under paragraph (b)(ii); and
 - (ii) proceedings by way of complaint and summons against the person for an offence against this Act would be ineffective.

Power to require production of certain documents

122.(1) An inspector may require—

- (a) a person to make available for inspection by an inspector, or produce to the inspector for inspection, at a reasonable time and place nominated by the inspector, a document issued to the person under this Act or required to be kept by the person under this Act; or
- (b) an employer, self-employed person, principal contractor or owner to make available for inspection by an inspector, or produce to the inspector for inspection, at a reasonable time and place nominated by the inspector, any document (including a contract) about work undertaken or being undertaken by the person.

(2) The employer, person, contractor or owner must comply with a requirement under subsection (1)(b), unless the employer, contractor or owner has a reasonable excuse for not complying.

Maximum penalty—10 penalty units.

(3) It is a reasonable excuse for the person not to comply with the requirement under subsection (1)(b) if complying with the requirement might tend to incriminate the person.

(4) The inspector may keep the document to copy it.

(5) If the inspector copies the document, or an entry in the document, the inspector may require the person responsible for keeping the document to certify the copy as a true copy of the document or entry.

(6) The person responsible for keeping the document must comply with the requirement, unless the person has a reasonable excuse for not complying.

Maximum penalty—10 penalty units.

(7) The inspector must return the document to the employer, self-employed person, contractor or owner as soon as practicable after copying it.

Division 5—Other enforcement matters

Destruction of workplace, plant or substance that is a serious risk to health or safety

123.(1) This section applies if an inspector reasonably believes that a workplace or part of a workplace, plant or a substance is so defective or hazardous that it is likely to cause serious bodily injury or work caused illness.

(2) The inspector may, by written notice, require the owner to destroy the workplace or part, plant or substance or make it harmless.

Example—

The inspector may require the owner to dismantle a workplace or stated plant to make it harmless or to remove stated plant or a stated substance from the workplace.

(3) A person must comply with the notice, unless the person has a reasonable excuse for not complying.

Maximum penalty for subsection (3)—40 penalty units.

Analysis of samples

124.(1) The chief executive may have a sample taken by an inspector analysed.

(2) A person must not, with intent to adversely affect the analysis of a thing—

- (a) tamper with the thing before an inspector takes a sample of the thing for analysis; or
- (b) tamper with a sample of a thing after it is taken by an inspector for analysis.

Maximum penalty—20 penalty units.

(3) If a particular method of analysis has been prescribed under a regulation, the analyst must follow the method.

(4) The chief executive must obtain from the analyst a certificate or report stating the analysis result.

Compensation

125.(1) A person may claim compensation from the State if the person incurs loss or expense because of the exercise or purported exercise of a power under any of the following divisions, including, for example, in complying with a requirement made of the person—

- division 2 (Inspectors' general powers)
- division 4 (Other investigative powers)
- division 5 (Other enforcement matters), other than section 123.²⁶

(2) Compensation may be claimed and ordered in a proceeding—

- (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or
- (b) for an offence against this Act brought against the person claiming compensation.

(3) A court may order compensation to be paid only if it is satisfied it is just to make the order in the circumstances of the particular case.

(4) A regulation may prescribe matters that may, or must, be taken into account by the court when considering whether it is just to make the order.

Forfeiture on conviction

126.(1) On the conviction of a person for an offence against this Act, the court may order the forfeiture to the State of anything used to commit the offence or anything else the subject of the offence.

(2) The court may make the order—

- (a) whether or not the thing has been seized under this Act; and

²⁶ Section 123 deals with destruction of a workplace, plant or substance that is a serious risk to workplace health or safety.

(b) if the thing has been seized—whether or not the thing has been returned to its owner.

(3) The court may make any order to enforce the forfeiture that it considers appropriate.

(4) This section applies to a thing only if the court is satisfied that the thing—

(a) has resulted or may result in a work caused illness; or

(b) has caused or may cause serious bodily injury or a dangerous event.

(5) This section does not limit the court's powers under the *Penalties and Sentences Act 1992* or another law.

Dealing with forfeited things

127.(1) On the forfeiture of a thing to the State, the thing becomes the State's property and may be dealt with by the chief executive as the chief executive considers appropriate.

(2) Without limiting subsection (1), the chief executive may destroy it.

Inspector to give notice of damage

128.(1) This section applies if—

(a) an inspector damages something when exercising or purporting to exercise a power; or

(b) a person (the “**other person**”) acting under the direction of an inspector damages something.

(2) The inspector must promptly give written notice of particulars of the damage to the person who appears to be the owner of the thing.

(3) If the inspector believes the damage was caused by a latent defect in the thing or circumstances beyond the inspector's or other person's control, the inspector may state it in the notice.

(4) If, for any reason, it is impracticable to comply with subsection (2), the inspector must leave the notice in a conspicuous position and in a reasonably secure way where the damage happened.

(5) This section does not apply to damage the inspector reasonably believes is trivial.

(6) In this section—

“owner” of a thing includes the person in possession or control of it.

PART 10—BOARDS OF INQUIRY

Division 1—General

Minister may establish or re-establish boards of inquiry

129.(1) The Minister may establish or re-establish a board of inquiry about any workplace incident²⁷ by gazette notice.

(2) The notice, or a subsequent gazette notice, may specify issues relevant to the inquiry including, for example, the membership of the board and its terms of reference.

(3) The Minister may exercise powers under this section for a workplace incident—

- (a) whether or not the incident has been investigated by an inspector; and
- (b) whether or not a board of inquiry had previously inquired into the incident.

Role of board of inquiry

130.(1) The board of inquiry must—

- (a) inquire into the circumstances and probable causes of the relevant workplace incident; and
- (b) give the Minister a written report of the board’s findings.

²⁷ “Workplace incident” is a defined term. See the dictionary for its meaning.

(2) The report may contain the recommendations the board considers appropriate and other relevant matters.

(3) The Minister must table a copy of the report in the Legislative Assembly within 14 days after receiving the report.

(4) However, if the board gives the Minister a separate report of issues that the board considers should not be made public, the Minister need not table the separate report in the Legislative Assembly.

Conditions of appointment

131.(1) Members of the board of inquiry are entitled to be paid the fees and allowances decided by the Minister.

(2) The members' terms of office are the terms provided by this Act and the other terms (if any) decided by the Minister.

Chief executive to arrange for services of staff and financial matters for board of inquiry

132. As soon as practicable after the board of inquiry is established, the chief executive must consult with the chairperson of the board and arrange—

- (a) for the services of officers and employees of the department and other persons to be made available to the board for the conduct of the inquiry; and
- (b) for financial matters relevant to the board.

Inspector may exercise powers for board's inquiry

133.(1) This section applies to an inspector whose services have been made available to the board of inquiry.

(2) The inspector may exercise the powers of an inspector under part 9²⁸ for the workplace incident the subject of the board's inquiry.

²⁸ Part 9 (Inspectors)

Division 2—Conduct of inquiry**Procedure**

134.(1) When conducting its inquiry, the board of inquiry—

- (a) must observe natural justice; and
- (b) must act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues.

(2) In conducting the inquiry, the board—

- (a) is not bound by the rules of evidence; and
- (b) may inform itself in any way it considers appropriate, including holding hearings; and
- (c) may decide the procedures to be followed for the inquiry.

(3) However, the board must comply with this division and any procedural rules prescribed under a regulation.

(4) The chairperson presides at the inquiry.

Notice of inquiry

135. The chairperson of the board of inquiry must give at least 14 days written notice of the time and place of the inquiry to—

- (a) any person concerned in the workplace incident the subject of the inquiry; and
- (b) any other person who the chairperson has reason to believe should be given the opportunity to appear at the inquiry.

Inquiry to be held in public except in special circumstances

136.(1) An inquiry must be held in public.

(2) However, the board may, of its own initiative or on the application of a person represented at the inquiry, direct that the inquiry, or a part of the inquiry, be held in private, and give directions about the persons who may be present.

(3) The board may give a direction under subsection (2) only if it is satisfied it is proper to make the order in the special circumstances of the inquiry.

Protection of members, legal representatives and witnesses

137.(1) A member of the board of inquiry has, in the performance of the member's duties, the same protection and immunity as a Supreme Court judge.

(2) A lawyer or other person appearing before the board for someone has the same protection and immunity as a lawyer appearing for a party in a proceeding in the Supreme Court.

(3) A person summoned to attend or appearing before the board as a witness has the same protection as a witness in a proceeding in the Supreme Court.

Record of proceedings to be kept

138. The board of inquiry must keep a record of its proceedings.

Procedural fairness and representation

139.(1) In conducting the inquiry, the board must give a person concerned in the workplace incident the opportunity of defending all claims made against the person.

(2) The person may be represented before the board by a lawyer or agent.

Board's powers on inquiry

140.(1) In conducting the inquiry, the board may—

- (a) act in the absence of any person who has been given a notice under section 135²⁹ or some other reasonable notice; and
- (b) receive evidence on oath or affirmation or by statutory declaration; and

²⁹ Section 135 (Notice of inquiry)

- (c) adjourn the inquiry; and
- (d) disregard any defect, error, omission or insufficiency in a document.

(2) A member of the board may administer an oath or affirmation to a person appearing as a witness before the inquiry.

Notice to witness

141.(1) The chairperson of the board of inquiry may, by written notice given to a person, require the person to attend the inquiry at a stated time and place to give evidence or produce stated documents or things.

(2) A person required to appear as a witness before the board is entitled to the witness fees prescribed under a regulation or, if no witness fees are prescribed, the reasonable witness fees decided by the chairperson.

Inspection of documents or things

142.(1) If a document or thing is produced to the board at the inquiry, the board may—

- (a) inspect the thing; and
- (b) copy or photograph the thing if it is relevant to the inquiry.

(2) The board may also take possession of the thing, and keep it while it is necessary for the inquiry.

(3) While it keeps a document or thing, the board must permit a person otherwise entitled to possession of it to inspect, copy or photograph the thing, at a reasonable place and time the board decides.

Inquiry may continue despite court proceedings unless otherwise ordered

143. The inquiry may start or continue, and a report may be prepared or given, despite a proceeding before any court or tribunal, unless a court or tribunal with the necessary jurisdiction orders otherwise.

Offences by witnesses

144.(1) A person given a notice under section 141³⁰ must not fail, without reasonable excuse—

- (a) to attend as required by the notice; or
- (b) to continue to attend as required by the chairperson of the board of inquiry until excused from further attendance.

Maximum penalty—30 penalty units.

(2) A person appearing as a witness at the inquiry must take an oath or make an affirmation when required by the chairperson of the board.

Maximum penalty—30 penalty units.

(3) Also, a person appearing as a witness at the inquiry must not fail, without reasonable excuse—

- (a) to answer a question the person is required to answer by a member of the board; or
- (b) to produce a document or thing the person is required to produce by a notice under section 141.

Maximum penalty—30 penalty units.

(4) It is a reasonable excuse to refuse to answer a question or produce a document or thing on the ground that the answer or production of the document or thing might tend to incriminate the person.

Contempt of board

145. A person must not—

- (a) deliberately interrupt the inquiry; or
- (b) create or continue or join in creating or continuing, a disturbance in or near a place where the board is conducting its inquiry; or
- (c) do anything that would be contempt of court if the board were a judge acting judicially.

Maximum penalty—30 penalty units.

³⁰ Section 141 (Notice to witness)

Report of offences

146. If the board of inquiry considers material before it discloses an offence, it may report the offence to 1 or more of the following persons and may make available to the person or persons all relevant material in the board's possession—

- (a) the commissioner of the police service;
- (b) the Criminal Justice Commission;
- (c) the director of public prosecutions;
- (d) the chief executive.

Change of membership of board

147. The inquiry of a board of inquiry is not affected by a change in its membership.

PART 11—APPEALS*Division 1—Internal review of decisions***Application for review**

148. A person whose interests are affected by a decision of the chief executive or an inspector (the “**original decision**”) may apply under this division for the decision to be reviewed.

Procedure for review

149.(1) The application must—

- (a) be made in the approved form to the chief executive; and
- (b) be supported by enough information to enable the chief executive to decide the application.

(2) If the application is for the review of a decision to forfeit a thing, the

application must be made to the chief executive within—

- (a) 28 days after the day on which the person receives notice of the original decision; or
- (b) the longer period, within 2 months after the day, the chief executive in special circumstances allows.

(3) If the application is for the review of another decision, the application must be made to the chief executive within—

- (a) 14 days after the day on which the person receives notice of the original decision; or
- (b) the longer period, within 2 months after the day, the chief executive in special circumstances allows.

(4) If the chief executive is satisfied the applicant has complied with subsection (1), the chief executive must immediately tell the applicant in writing of that fact.

Review of decision

150.(1) The chief executive must, within 14 days after giving the notice in section 149(4), review the original decision and make a decision (the “**review decision**”)—

- (a) to confirm the decision appealed against; or
- (b) to vary the decision appealed against; or
- (c) to set aside the decision appealed against and make a decision in substitution for the decision set aside.

(2) The application must not be dealt with by—

- (a) the person who made the original decision; or
- (b) a person in a less senior office than the person who made the original decision.

(3) Within 14 days after making the review decision, the chief executive must give written notice of the decision to the applicant.

(4) The notice must—

- (a) include the reasons for the review decision; and

(b) tell the applicant of the applicant's right of appeal against the decision.

(5) If the chief executive does not—

(a) review the original decision within the time allowed under subsection (1); or

(b) having reviewed the decision, tell the applicant of the review decision within the time allowed under subsection (3);

the applicant may appeal against the original decision under section 152.

(6) This section does not apply to an original decision made by the chief executive personally.

Stay of operation of original decisions

151.(1) If a person applies for a decision to be reviewed, the person may immediately apply to the Industrial Court for a stay of the decision.

(2) The court may stay the decision to secure the effectiveness of the review and any later appeal to the court.

(3) A stay—

(a) may be given on conditions the court considers appropriate; and

(b) operates for the period fixed by the court; and

(c) may be revoked or amended by the court.

(4) The period of a stay must not extend past the time when the chief executive reviews the decision and any later period the court allows the person to appeal against the decision.

(5) An application made for the review of a decision affects the decision, or the carrying out of the decision, only if the decision is stayed.

Division 2—Appeals

Who may appeal?

152.(1) A person whose interests are affected by an original decision or review decision may appeal against the decision to the Industrial Court.

(2) The person has a right to receive a statement of the reasons for the decision.

How to start appeal

153.(1) An appeal is started by—

- (a) filing written notice of appeal with the registrar of the Industrial Court; and
- (b) complying with rules of court applying to the appeal.

(2) The notice of appeal must be filed within 30 days after—

- (a) if the appeal is from an original decision—the day the appellant receives notice of the original decision; or
- (b) if the appeal is from a review decision—the day the appellant receives reasons for the review decision.

(3) The court may at any time extend the period for filing the notice of appeal.

(4) The notice of appeal must state fully the grounds of the appeal and the facts relied on.

Stay of operation of decisions

154.(1) The Industrial Court may grant a stay of a decision appealed against to secure the effectiveness of the appeal.

(2) A stay—

- (a) may be given on the conditions the court considers appropriate; and
- (b) operates for the period fixed by the court; and
- (c) may be revoked or amended by the court.

(3) The period of a stay must not extend past the time when the court decides the appeal.

(4) An appeal against a decision affects the decision, or carrying out of the decision, only if the decision is stayed.

Hearing procedures

155.(1) The procedure for an appeal is to be in accordance with the rules of court applying to the appeal or, if the rules make no provision or insufficient provision, in accordance with directions of the Industrial Court.

(2) An appeal is by way of rehearing, unaffected by the chief executive's decision.

Assessors

156. If the Industrial Court is satisfied the appeal involves an issue of special knowledge and skill, the court may appoint 1 or more assessors to help in deciding the appeal.

Powers of court on appeal

157.(1) In deciding an appeal, the Industrial Court may—

- (a) confirm the decision appealed against; or
- (b) vary the decision appealed against; or
- (c) set aside the decision appealed against and make a decision in substitution for the decision set aside; or
- (d) set aside the decision appealed against and return the issue to the decision maker with directions the court considers appropriate.

(2) If on appeal the court acts under subsection (1)(b) or (c), the decision is taken, for this Act (other than this part), to be that of the chief executive.

PART 12—LEGAL PROCEEDINGS

Division 1—Evidence

Application of division

158.(1) This division applies to a proceeding under this Act or another Act prescribed under a regulation.

Proof of appointments and authority unnecessary

159. It is not necessary to prove—

- (a) the appointment of the chief executive or an inspector; or
- (b) the authority of the chief executive or an inspector to do anything under this Act.

Proof of signatures unnecessary

160. A signature purporting to be the signature of the chief executive or an inspector is evidence of the signature it purports to be.

Evidentiary aids

161.(1) In this section—

“certificate” means a certificate purporting to be signed by the chief executive or an inspector.

(2) A certificate stating any of the following matters is evidence of the matter—

- (a) a stated document is—
 - (i) an appointment or approval or a copy of an appointment or approval; or
 - (ii) an improvement or prohibition notice, or a copy of an improvement or prohibition notice; or
 - (iii) a decision, or a copy of a decision, given or made under this

Act; or

- (iv) a record or document, a copy of a record or document, or an extract from a record or document, kept under this Act;
- (b) on a stated day, or during a stated period, a stated certificate, registration, approval or appointment was, or was not, in force for a stated person, workplace or thing;
- (c) on a stated day, or during a stated period, a standard issued or published by National Occupational Health and Safety Commission or Standards Australia or something in the standard was, or was not, in force;
- (d) on a stated day a stated person was given a stated direction or notice under this Act;
- (e) a stated amount is payable under this Act by a stated person and has not been paid;
- (f) a stated substance is a hazardous substance;
- (g) an instrument, equipment or installation was used in accordance with conditions prescribed under a relevant document for its use;
- (h) anything else prescribed by regulation.

(5) A document purporting to be published by or under the authority of National Occupational Health and Safety Commission or Standards Australia is, on its production in a proceeding, evidence of the matters appearing on and in the document.

(6) In a complaint starting a proceeding, a statement that the matter of the complaint came to the complainant's knowledge on a stated day is evidence of the matter.

(7) Any instrument, equipment or installation used by an inspector or analyst in accordance with the conditions (if any) prescribed under a relevant document for its use is taken to be accurate and precise in the absence of evidence to the contrary.

Expert reports

162.(1) An expert report is admissible in evidence in a proceeding under this Act, whether or not the person making the report (the “**expert**”) attends

to give oral evidence in the proceeding.

(2) However, if the expert does not attend to give oral evidence in the proceeding, the report is admissible only with the court's leave.

(3) In deciding whether to grant leave, the court must have regard to the following—

- (a) the contents of the report;
- (b) why the expert does not intend to give oral evidence;
- (c) the risk that its admission or exclusion from evidence will result in unfairness to a party, in particular having regard to a party's ability to controvert the contents of the report if the expert does not give oral evidence;
- (d) any other relevant circumstance.

(4) An expert report when admitted is evidence of any fact or opinion of which the expert could have given oral evidence.

(5) In this section—

“expert report” means a report made by a person that deals entirely or mainly with issues on which the person is qualified to give expert evidence, but does not include an analyst's report.

Analyst's certificate or report

163. The production by the prosecutor or the defendant in a prosecution of a signed analyst's report stating any of the following is evidence of them—

- (a) the analyst's qualifications;
- (b) the analyst took, or received from a stated person, the sample mentioned in the report;
- (c) the analyst analysed the sample on a stated day, or during a stated period, and at a stated place;
- (d) the results of the analysis.

Division 2—Proceedings

Proceedings for offences

164.(1) A prosecution for an offence against this Act is by way of summary proceedings before an industrial magistrate.

(2) More than 1 contravention of a workplace health and safety obligation under part 3 may be charged as a single charge if the acts or omissions giving rise to the claimed contravention happened within the same period and at the same workplace.

(3) A person aggrieved by a decision of an industrial magistrate in proceedings brought under subsection (1) who desires to appeal must appeal to the Industrial Court.

(4) The *Industrial Relations Act 1990* applies, with any necessary changes, to a proceeding before an industrial magistrate brought under subsection (1) and to a proceeding on appeal before the Industrial Court brought under subsection (3).

(5) A prosecution for an offence against this Act must be commenced by complaint of an inspector or someone else authorised by the Minister or the chief executive.

Limitation on time for starting proceedings

165. A proceeding for an offence against this Act must start—

- (a) within 1 year after the commission of the offence; or
- (b) within 6 months after the offence comes to the complainant's knowledge, but within 18 months after the commission of the offence.

Responsibility for acts or omissions of representatives

166.(1) In this section—

“representative” means—

- (a) of a corporation—an executive officer, employee or agent of the corporation; or

(b) of an individual—an employee or agent of the individual.

“**state of mind**” of a person includes—

(a) the person’s knowledge, intention, opinion, belief or purpose; and

(b) the person’s reasons for the intention, opinion, belief or purpose.

(2) Subsections (3) and (4) apply in a proceeding for an offence against this part.

(3) If it is relevant to prove a person’s state of mind about a particular act or omission, it is enough to show—

(a) the act was done or omitted to be done by a representative of the person within the scope of the representative’s actual or apparent authority; and

(b) the representative had the state of mind.

(4) An act done or omitted to be done for a person by a representative of the person within the scope of the representative’s actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.

Executive officers must ensure corporation complies with Act

167.(1) The executive officers of a corporation must ensure that the corporation complies with this Act.

(2) If a corporation commits an offence against a provision of this Act, each of the corporation’s executive officers also commits an offence, namely, the offence of failing to ensure that the corporation complies with the provision.

Maximum penalty for subsection (2)—the penalty for the contravention of the provision by an individual.

(3) Evidence that the corporation has been convicted of an offence against a provision of this Act is evidence that each of the executive officers committed the offence of failing to ensure that the corporation complies with the provision.

(4) However, it is a defence for an executive officer to prove—

- (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence—the officer exercised reasonable diligence to ensure the corporation complied with the provision; or
- (b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.

Representation at hearing

168. A party to a proceeding under this Act may be represented by the party's lawyer or agent.

Recovery of fees

169.(1) A fee payable under this Act and not paid may be recovered by the chief executive—

- (a) in summary proceedings under the *Justices Act 1886*; or
- (b) by action for a debt in a court of competent jurisdiction.

(2) A fee may also be recovered in a proceeding for an offence against this Act.

(3) An order made under subsection (2) is enforceable under the *Justices Act 1886* as an order for payment of money made by a magistrate under that Act.

(4) If an order is made under subsection (2)—

- (a) the order may be filed in the registry of a Magistrates Court under the *Magistrates Courts Act 1921*; and
- (b) on being filed, is taken to be an order made by a Magistrates Court constituted under that Act and may be enforced accordingly.

PART 13—OFFENCES

Division 1—Offence provisions

Offences against this Act

170.(1) If a provision creates an offence against this Act, the maximum penalty for the contravention of the provision appears at the end of the provision.

(2) However, to help users of this Act, a list of provisions creating offences against this Act, and the maximum penalties for contravention of the provisions, can also be found in schedule 1.

Division 2—Other offences

False or misleading statements

171.(1) A person must not—

- (a) state anything to a board of inquiry, the chief executive or an inspector the person knows is false or misleading in a material particular; or
- (b) omit from a statement made to a board of inquiry, the chief executive or an inspector anything without which the statement is, to the person's knowledge, misleading in a material particular.

Maximum penalty—30 penalty units.

(2) It is enough for a complaint against a person for an offence against subsection (1) to state that the statement made was false or misleading to the person's knowledge.

False, misleading or incomplete documents

172.(1) A person must not give a board of inquiry, the chief executive or an inspector a document containing information the person knows is false, misleading or incomplete in a material particular.

Maximum penalty—30 penalty units.

(2) Subsection (1) does not apply to a person if the person, when giving the document—

- (a) tells the board, chief executive or inspector, to the best of the person's ability, how it is false, misleading or incomplete; and
- (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

(3) Also, a person must not make an entry in any document required or permitted to be made or kept under this Act knowing the entry to be false, misleading or incomplete in a material particular.

Maximum penalty—30 penalty units.

(4) It is enough for a complaint against a person for an offence against subsection (1) or (3) to state that the document or entry made was false, misleading or incomplete to the person's knowledge.

Obstructing inspectors

173.(1) A person must not obstruct an inspector in the exercise of a power, unless the person has a reasonable excuse for the obstruction.

Maximum penalty—40 penalty units.

(2) If a person has obstructed an inspector and the inspector decides to proceed with the exercise of the power, the inspector must warn the person.

(3) In warning a person under subsection (2), an inspector must warn the person that—

- (a) it is an offence to obstruct the inspector, unless the person has a reasonable excuse; and
- (b) the inspector considers the person's conduct is an obstruction.

(4) If, after an inspector has warned the person, the person continues with the conduct or repeats the conduct, the inspector may ask a police officer to help with the enforcement of this section.

(5) Subsection (4) does not limit section 116.³¹

³¹ Section 116 (Power to call police officer to help)

Steps a police officer may take for obstruction

174. A police officer may take the following steps if a person has obstructed an inspector—

- (a) the officer may ask the person whether the person has a reasonable excuse for the conduct and, if the person gives an excuse, ask for details or further details of the excuse;
- (b) if the person does not answer the question or gives an excuse the officer reasonably believes is not a reasonable excuse—the officer may—
 - (i) tell the person that the officer is considering arresting the person for obstruction; and
 - (ii) require the person to stop, or not repeat, the conduct;
- (c) the officer may arrest the person without a warrant if the officer reasonably believes—
 - (i) the person has not complied with a requirement under paragraph (b)(ii); and
 - (ii) proceedings by way of complaint and summons against the person for an offence against section 173(1) would be ineffective.

Employers and principal contractor not to encourage refusal to answer questions

175.(1) An employer must not encourage or influence, or attempt to encourage or influence, by general direction, promise of advantage, threat of dismissal or otherwise a worker of the employer to refuse to answer questions put to the worker by an inspector.

Maximum penalty—40 penalty units.

(2) A principal contractor for a construction workplace must not encourage or influence, or attempt to encourage or influence, by general direction, promise of advantage, threat or otherwise an employer or worker at the workplace to refuse to answer questions put to the employer or worker by an inspector.

Maximum penalty—40 penalty units.

Impersonating inspectors and others

176. A person must not pretend to be an inspector, accredited officer, workplace health and safety officer or workplace health and safety representative.

Maximum penalty—40 penalty units.

PART 14—GENERAL*Division 1—Accredited officers***Appointment**

177.(1) The chief executive may appoint a person, whether or not an officer of the public service, to be an accredited officer.

(2) The chief executive may appoint a person as an accredited officer only if—

- (a) the person—
 - (i) satisfies the chief executive the person has the necessary expertise or experience to be an accredited officer; or
 - (ii) the person has satisfactorily finished training approved by the chief executive; and
- (b) makes application for appointment in the way prescribed under a regulation.

Functions of accredited officers

178.(1) An accredited officer is subject to the chief executive's directions in performing the accredited officer's functions.

(2) The functions of an accredited officer may be stated—

- (a) under a regulation; or
- (b) under a condition of appointment; or

- (c) by written notice given by the chief executive to the accredited officer.

Accredited officer's appointment conditions

179.(1) An accredited officer holds office on the conditions stated in the instrument of appointment.

(2) An accredited officer—

- (a) if the appointment provides for a term of appointment—ceases holding office at the end of the term; and
- (b) if the conditions of appointment provide—ceases holding office on ceasing to hold another office stated in the appointment conditions; and
- (c) may resign by signed notice of resignation given to the chief executive.

Accredited officer's identity card

180.(1) The chief executive must give each accredited officer an identity card.

(2) The identity card must—

- (a) contain a recent photo of the accredited officer; and
- (b) be signed by the accredited officer; and
- (c) identify the person as an accredited officer for this Act; and
- (d) state an expiry date.

(3) A person who stops being an accredited officer must return the person's identity card to the chief executive as soon as possible (but within 21 days) after the person stops being an accredited officer, unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

Production or display of accredited officer's identity card

181. An accredited officer must, if performing a function, produce the officer's identity card for inspection if asked by any person to whom the performance of the function is relevant.

Revocation of accredited officer's appointment

182. The chief executive may revoke an accredited officer's appointment.³²

*Division 2—Miscellaneous***Protection from liability—officials**

183.(1) In this section—

“**official**” means—

- (a) the Minister; and
- (b) the chief executive; and
- (c) a member of a board of inquiry; and
- (d) a member of the council or industry committee; and
- (e) an inspector.

(2) An official is not civilly liable for an act done, or an omission made, honestly and without negligence under this Act.

(3) If subsection (2) prevents a civil liability attaching to an official, the liability attaches instead to the State.

Protection from liability—others

184.(1) A workplace health and safety representative or a member of a workplace health and safety committee is not civilly liable because of the exercise of, or the failure to exercise, a health and safety entitlement under

³² An accredited officer may appeal under section 152 against a decision to revoke the officer's appointment.

part 7.³³

(2) A workplace health and safety officer is not civilly liable because of the performance of, or the failure to perform, a health and safety function under part 8.³⁴

Powers of chief executive

185.(1) The chief executive may require—

- (a) a designer, manufacturer, importer or supplier of plant or specified high risk plant to prevent the use of unsafe plant at a workplace or elsewhere; or
- (b) a manufacturer, importer or supplier of a substance to prevent the use of an unsafe substance at a workplace or elsewhere.

(2) If the chief executive makes a requirement under subsection (1)—

- (a) the requirement must be given in writing to—
 - (i) the designer, manufacturer, importer or supplier of the plant; or
 - (ii) the manufacturer, importer or supplier of the substance; and
- (b) the decision to give the requirement must be made by the chief executive personally.

(3) For this section, plant or a substance is “**unsafe**” if the chief executive reasonably believes—

- (a) the plant or substance has caused, or is likely to cause, an immediate risk to a person’s health and safety; or
- (b) appropriate information about the plant or substance is not available.

(4) For subsection (3)(b), information is “**appropriate**” if—

- (a) for plant—the information states—
 - (i) the use for which the plant has been designed and tested; and

³³ Part 7 (Workplace consultative arrangements)

³⁴ Part 8 (Workplace health and safety officers)

- (ii) the conditions (if any) that must be observed if the plant is to be used safely and without risk to health; and
- (b) for a substance—the information clearly identifies the substance and states—
 - (i) the precautions (if any) to be taken for the safe use of the substance; and
 - (ii) the health hazards (if any) associated with the substance; and
 - (iii) the results of any tests relevant to the safe use of the substance that have been carried out on or in relation to the substance.

Exemption of person or thing from Act

186.(1) A regulation may exempt a person or thing from this Act or any of its provisions.

(2) The exemption may be given on stated conditions.

(3) If an exemption is given on conditions, the exemption operates only if the conditions are complied with.

PART 15—ADMINISTRATION

Delegations

187. The chief executive may delegate the chief executive's powers under this Act to an inspector or officer or employee of the public service.

PART 16—REGULATIONS

Regulations

188.(1) The Governor in Council may make regulations under this Act.

(2) A regulation may be made about workplace health and safety, including, for example, any of the following—

- (a) notification of building work, civil construction work and demolition work;
- (b) notification of injuries and dangerous events at workplaces;
- (c) the registration of workplaces, plant and plant design;
- (d) amenities for workplaces;
- (e) the grant, endorsement, renewal, suspension or cancellation of certificates or licences and the recognition of certificates or licences granted by someone else;
- (f) the experience or qualifications a person must have for a certificate or licence;
- (g) keeping documents and the time for which the documents must be kept;
- (h) the publication of analysis results;
- (i) fees;
- (j) keeping registers;
- (k) costs payable in a proceeding under this Act;
- (l) fixing a penalty of not more than 30 penalty units for a contravention of a regulation.

PART 17—TRANSITIONAL PROVISIONS AND REPEALS

Division 1—Definitions

Definitions for part

189.(1) In this part—

“expiry day” means 1 January 1996 or, if a regulation provides, 1 July 1996.

“former Act” means the *Workplace Health and Safety Act 1989*.

(2) This section is a law to which the *Acts Interpretation Act 1954*, section 20A applies.

(3) This division expires on 1 July 1996.

Division 2—Transitional matters

Existing regulations

190.(1) A provision of the *Workplace Health and Safety Regulation 1989* mentioned in subsection (4) and in force under the former Act immediately before the commencement remains in force for this Act.

(2) The provision—

- (a) may be amended or repealed by a regulation under this Act; and
- (b) is to be read with the changes necessary to make it consistent with this Act and adapt its operation to the provisions of this Act.

(3) The provision expires on the expiry day unless earlier repealed.

(4) Subject to subsection (5), the provisions that remain in force for this Act are—

- section 12 (Safeguards and safety measures to be taken by principal contractor)
- part 10 (Construction and maintenance equipment)

- part 11 (Construction, alteration and removal of buildings and structures)
- part 12 (Demolition work)
- part 13 (Excavations, trenches, caissons, cofferdams and tunnels)
- part 16 (Access provisions)
- part 17 (Electrical equipment and installations)
- part 18 (Cranes and hoists)
- part 27 (Confined spaces)
- part 28 (Lead)
- part 29 (Asbestos)
- part 30 (Noise)
- part 31 (Spray painting)
- part 32 (Welding)
- part 33 (Foundry and abrasive blasting)
- part 34 (Compressed air)
- part 35 (Underwater diving)
- part 37 (Hazardous substances)
- part 38 (Air handling and water systems of buildings).

(5) Also, the *Workplace Health and Safety Amendment Regulation (No. 1) 1995* (other than section 5) remains in force under this Act and, for subsection (2)(a), is taken to be a regulation under this Act.

(6) This section expires on 1 July 1996.

Existing codes of practice

191.(1) This section applies to a code of practice approved under the former Act, and in force immediately before the commencement, if the code is notified by the Minister under this Act before 1 December 1995.

(2) The code of practice is taken to be an advisory standard made under this Act.

(3) The code of practice is to be read with the changes necessary to make it consistent with this Act and adapt its operation to the provisions of this Act.

(4) The code of practice expires on the expiry day unless earlier repealed.

(5) This section expires on 1 July 1996.

Existing exemptions

192.(1) An exemption notice mentioned in subsection (4) and in force under the former Act immediately before the commencement remains in force for this Act.

(2) The notice—

- (a) may be amended or repealed by a regulation under this Act; and
- (b) is to be read with the changes necessary to make it consistent with this Act and adapt its operation to the provisions of this Act.

(3) The notices expire on the expiry day unless earlier repealed.

(4) The notices are—

- Notice of Exemption from Regulation 211(2) published in the industrial gazette on 4 May 1991 at page 18
- *Workplace Health and Safety (A–C Sheeting) Exemption Notice (No. 2) 1992*, SL No. 285
- the *Workplace Health and Safety (Certificates) Exemption Notice 1994*, SL No. 267, section 7.

(5) This section expires on 1 July 1996.

Existing industry workplace health and safety committees and members of the committees

193.(1) An industry workplace health and safety committee established under section 47 of the former Act and discharging functions immediately before the commencement is taken to be an industry committee under this Act until—

- (a) the period for which the committee was established expires; or

(b) the Minister dissolves the committee.

(2) A person who immediately before the commencement was a member of the committee continues, after the commencement, as a member of the industry committee until—

(a) the term for which the member was appointed under the former Act expires; or

(b) the member's term is ended under this Act.

(3) This section is a law to which the *Acts Interpretation Act 1954*, section 20A applies.

(4) This section expires on 1 July 1996.

Existing health and safety officers

194.(1) A person who, immediately before the commencement, was a health and safety officer designated as health and safety officer for a workplace under section 58 of the former Act is taken—

(a) to be the holder of a current certificate of authority for appointment as a workplace health and safety officer under this Act; and

(b) to have been appointed as the workplace health and safety officer for the workplace under this Act at the commencement.

(2) The certificate of authority for appointment as a workplace health and safety officer is taken to be current until the day 5 years after the day the person received notice of having satisfactorily completed the course mentioned in section 61(2) of the former Act.

(3) This section expires on 1 July 2000.

Existing health and safety representatives

195.(1) A person who immediately before the commencement was a health and safety representative for a workplace continues, after the commencement, as the representative for the workplace under this Act until the first of the following events happens—

(a) the person resigns as representative or stops being a worker at the

workplace;

(b) the majority of workers at the workplace otherwise decide.

(2) This section is a law to which the *Acts Interpretation Act 1954*, section 20A applies.

(3) This section expires on 1 July 1996.

Existing health and safety committees

196.(1) A health and safety committee established by an employer or principal contractor under section 71 of the former Act and discharging functions immediately before the commencement continues as the workplace health and safety committee established by an employer or principal contractor under this Act at the commencement.

(2) This section is a law to which the *Acts Interpretation Act 1954*, section 20A applies.

(3) This section expires on 1 July 1996.

Continuation of improvement, prohibition and seizure notices

199.(1) An improvement, prohibition or seizure notice issued under the former Act and in force at the commencement continues to have effect, after the commencement, as if it were given under this Act.

(2) An improvement, prohibition or seizure notice is to be read with the changes necessary to make it consistent with this Act and adapt its operation to the provisions of this Act.

(3) In this section—

“prohibition notice” includes an oral direction given by an inspector under section 91 of the former Act.

“seizure notice” means a notice in the prescribed form issued under section 84(2) of the former Act.

(4) This section is a law to which the *Acts Interpretation Act 1954*, section 20A applies.

(5) This section expires on 1 July 1996.

Existing certificates

200.(1) A certificate to work in, or in a part of, an occupation prescribed under the former Act and granted to a person under the former Act continues in force under this Act.

(2) The certificate is, to the greatest practicable extent, subject to the same conditions that applied to it immediately before the commencement.

(3) This section is a law to which the *Acts Interpretation Act 1954*, section 20A applies.

(4) This section expires on 1 July 1996.

Existing registrations continue

201.(1) A workplace or plant or the details of plant design that—

(a) is required to be registered under this Act; and

(b) was registered under the former Act immediately before commencement;

is taken to be registered under this Act.

(2) The registration of a workplace or plant continues in force until the term of the registration ends.

(3) This section is a law to which the *Acts Interpretation Act 1954*, section 20A applies.

(4) This section expires on 1 July 1996.

Approved methods of work

202.(1) An approval of a method of work under section 136(2) of the former Act and in force under the former Act immediately before the commencement continues, for this Act, to have effect according to its terms after the commencement.

(2) The approval of the method of work may be amended or repealed by a regulation.

(3) The approval of the method of work expires on 1 July 1997 unless

earlier repealed or ended.

(4) This section expires on 1 July 1997.

Existing exemptions under s 110(2)(b) of former Act

203.(1) An exemption given under section 110(2)(b) of the former Act and in force immediately before the commencement remains in force for this Act.

(2) The exemption expires on the expiry day unless earlier repealed.

(3) This section is a law to which the *Acts Interpretation Act 1954*, section 20A applies.

(4) This section expires on 1 July 1996.

Appeals under former Act may be continued

204.(1) An appeal under the former Act not finally dealt with at the commencement may be continued and dealt with under this Act.

(2) A right of appeal under the former Act at the commencement may be exercised, within the time allowed under this Act for a similar appeal, and dealt with under this Act after the commencement.

(3) This section expires on 1 January 1996.

Workplace Health and Safety Act 1989 references

204A. In an Act or document, a reference to the *Workplace Health and Safety Act 1989* may, if the context permits, be taken to be a reference to this Act.

Transitional regulations

205.(1) A regulation may make provision about a matter for which—

- (a) provision is made under the former Act; and
- (b) in the opinion of the Governor in Council, no provision, or insufficient provision, is made about the matter under this part.

(2) A regulation made for this part may be given retrospective effect to a day not earlier than the commencement.

(3) A regulation under subsection (1) and this section expire on 1 July 1996.

SCHEDULE 1**LIST OF OFFENCES AND PENALTIES**

section 170(2)

Purpose of schedule

1. The purpose of this schedule is to list, in a convenient form, the penalties for offences under this Act.

List of offences and penalties

2. The maximum penalty for a contravention of a provision mentioned in column 1 is the penalty mentioned in column 2.

Column 1**Column 2**

24(1) ³⁵	400 penalty units or 6 months imprisonment
73(3)	10 penalty units
76(1)	10 penalty units
77(1)	10 penalty units
77(2)	10 penalty units
77(3)	10 penalty units
79(2)	10 penalty units
80(1)	10 penalty units
80(2)	10 penalty units
86(3)	10 penalty units
86(4)	10 penalty units
93(1)	20 penalty units

³⁵ Section 24 imposes the penalty for contraventions of the provisions of part 3, divisions 2 and 3.

SCHEDULE 1 (continued)

94(1)	20 penalty units
95(1)	10 penalty units
95(2)	10 penalty units
95(3)	10 penalty units
102(3)	10 penalty units
108(4)	40 penalty units
111(2)	40 penalty units
111(5)	40 penalty units
117(4)	40 penalty units
118(4)	40 penalty units or 6 months imprisonment
119(4)	200 penalty units or 6 months imprisonment
120(5)	10 penalty units
122(2)	10 penalty units
122(6)	10 penalty units
123(3)	40 penalty units
124(2)	20 penalty units
144(1)	30 penalty units
144(2)	30 penalty units
144(3)	30 penalty units
145	30 penalty units
167(2)	penalty for the contravention of the provision by an individual
171(1)	30 penalty units
172(1)	30 penalty units
172(3)	30 penalty units
173	40 penalty units
175(1)	40 penalty units

SCHEDULE 1 (continued)

175(2)	40 penalty units
176	40 penalty units
180(3)	10 penalty units

SCHEDULE 2

SPECIFIED HIGH RISK PLANT

sch 3, definition “specified high risk plant”

Meaning of “specified high risk plant”

1. The following items of plant are specified high risk plant—

- airconditioning unit
- amusement device
- cooling tower
- escalator
- gas cylinder
- lift.

Definitions for schedule

2. In this schedule—

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

- (a) incorporates a cooling tower; or
- (b) consists of 1 or more compressors and the power rating required for operation of the airconditioning unit is 50 kW or more.

“amusement device” means a device—

- (a) used for commercial purposes; and
- (b) 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, for example, any car, carriage, platform, cage, boat, plank, chair, seat or thing) while the part of the device is in motion.

SCHEDULE 2 (continued)

“cooling tower” means a device for lowering the temperature of water by evaporative cooling in which atmospheric air passes through sprayed water exchanging heat, and includes a device incorporating a refrigerant or water heat exchanger.

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

“gas cylinder” means a cylinder with a water capacity of more than 0.1 kg, but not more than 500 kg, that contains liquefied petroleum gas under pressure.

“lift” means any machinery—

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

SCHEDULE 3**DICTIONARY**

section 8

“airconditioning unit” see schedule 2.

“amusement device” see schedule 2.

“approved form” means a form approved by the chief executive.

“area of representation”, for a workplace health and safety representative, see section 69.

“at” a place includes in or on a place.

“building work” means work to erect, construct, extend or structurally alter a building or part of a building if the estimated final price at practical completion is more than \$40 000 or, if a greater amount is prescribed under a regulation, the greater amount.

“certificate” means a certificate given under this Act.

“civil construction work” means work to—

- (a) construct a road or highway or erect associated works; or
- (b) construct a railway or erect associated works; or
- (c) construct or erect a harbour or associated works; or
- (d) construct or erect a water storage or supply system or associated works; or
- (e) construct a sewerage or drainage system or associated works; or
- (f) construct or erect an electricity or gas generation, transmission or distribution structure or associated works; or
- (g) construct a park or recreation ground, including, for example, a golf course, playing field, racecourse or swimming pool or associated works; or
- (h) erect a telecommunications structure or associated works; or

SCHEDULE 3 (continued)

- (i) construct production, storage and distribution facilities for heavy industry, refineries, pumping stations, or mines or associated works; or
- (j) construct or structurally alter a bridge or associated works; if the estimated final price of the work at practical completion is more than \$40 000 or another amount prescribed by regulation.

“compliance standard” includes special compliance standard.

“construction workplace” see section 14.

“conviction” includes a finding of guilt, and the acceptance of a plea of guilty by a court.

“cooling tower” see schedule 2.

“council” means the Workplace Health and Safety Council.

“co-workers”, for part 7, see section 66.

“dangerous event” means an event at a workplace involving imminent risk of explosion, fire or serious bodily injury.

“deal with” includes sell, dispose of and destroy.

“demolition work” means work to demolish or dismantle systematically a building or other structure, or part of a building or other structure, but does not include the systematic dismantling of a part of a building or other structure for alteration, maintenance, remodelling or repair.

“domestic premises” means premises usually occupied as a private dwelling house.

“employer” see section 10.

“escalator” see schedule 2.

“executive officer”, of a corporation, means a person who is concerned with, or takes part in, the corporation’s management, whether or not the person is a director or the person’s position is given the name of executive officer.

“fee” includes tax.

SCHEDULE 3 (continued)

“gas cylinder” see schedule 2.

“improvement notice” see section 117.

“inspector” means a person who is appointed under this Act as an inspector.

“lift” see schedule 2.

“obstruct” includes hinder, resist and attempt to obstruct.

“occupier”, of a place, includes a person who reasonably appears to be the occupier, or in charge, of the place.

“owner” includes—

- (a) the person from whom a thing was seized unless the chief executive is aware of its actual owner; and
- (b) a mortgagee in possession; and
- (c) a lessee.

“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.

“place” includes land, a building, another structure or installation, a road, a vehicle, a tent or marquee, or any other place (even if the place is in a natural or undeveloped state) whether the place is on or under the water or on the bed of any waters.

“plant” includes—

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

“principal contractor” see section 13.

SCHEDULE 3 (continued)

“prohibition notice” see section 118.

“public place” means a place that the public is entitled to use, is open to the public or is used by the public, whether or not on payment of money.

“qualified person”, for part 8, see section 92.

“reasonably believes” means believes on grounds that are reasonable in all the circumstances.

“reasonably suspects” means suspects on grounds that are reasonable in all the circumstances.

“relevant place”, in part 3, division 2, means—

- (a) for plant other than specified high risk plant—a workplace; or
- (b) for specified high risk plant—any place, whether or not a workplace.

“review decision”, for part 11, see section 150.

“risk” means risk of injury or disease.

“self-employed person” see section 12.

“serious bodily injury” means an injury—

- (a) that causes death; or
- (b) impairs a person to such an extent that as a consequence of the injury the person becomes an overnight or longer stay patient in a hospital.

“specified high risk plant” see schedule 2.

“standard” means a compliance or advisory standard.

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

“undertaking” includes business and work activity.

“union”, for part 7, see section 66.

“used properly”, for plant or a substance, see section 15.

“vehicle” includes ship, boat and aircraft.

SCHEDULE 3 (continued)

“work caused illness” means—

- (a) a disease that is contracted by an employer, self-employed person or worker (a **“person”**) in the course of doing work and to which the work was a contributing factor; or
- (b) the recurrence, aggravation, acceleration, exacerbation or deterioration in a person of an existing disease in the course of doing work to which the work was a contributing factor to the recurrence, aggravation, acceleration, exacerbation or deterioration.

“worker” see section 11.

“work injury” means—

- (a) an injury to an employer, self-employed person or worker (a **“person”**) in the course of doing work that requires first aid or medical treatment; or
- (b) the recurrence, aggravation, acceleration, exacerbation or deterioration of any existing injury in a person in the course of doing work—
 - (i) that requires first aid or medical treatment; and
 - (ii) to which the work was a contributing factor to the recurrence, aggravation, acceleration, exacerbation or deterioration.

“workplace” see section 9.

“workplace activity” includes—

- (a) work at a workplace; and
- (b) workplace operations.

“workplace health and safety obligation” means an obligation imposed under part 3.

“workplace health and safety officer” means a person who—

- (a) holds a current authority for appointment as a workplace health and safety officer; and

SCHEDULE 3 (continued)

- (b) is appointed as a workplace health and safety officer by—
 - (i) an employer for the employer's workplace; or
 - (ii) a principal contractor.

“workplace health and safety representative” see section 67.

“workplace incident” means—

- (a) an incident resulting in a person suffering serious bodily injury that must be notified to the chief executive under a regulation; or
- (b) a work caused illness that must be notified to the chief executive under a regulation; or
- (c) a dangerous event that must be notified to the chief executive under a regulation; or
- (d) another matter decided by the Minister to be a workplace incident.

ENDNOTES

1 Index to endnotes

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2	Date to which amendments incorporated	122
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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 18 January 1996. Future amendments of the Workplace Health and Safety Act 1995 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
om	=	omitted	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered
prev	=	previous			

4 Table of earlier reprints

TABLE OF EARLIER REPRINTS

Reprint No.	Amendments included	Reprint date
1	none	7 July 1995

5 List of legislation

Workplace Health and Safety Act 1995 No. 25

date of assent 11 April 1995

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1995 (see s 2)

as amended by—

Statute Law Revision Act 1995 No. 57 ss 1–2, 4 sch 1

date of assent 28 November 1995

s 4 sch 1 amd 5 commenced 1 July 1995 (see s 2(1))

remaining provisions commenced on date of assent

6 List of annotations

Commencement

s 2 om R2 (see RA s 37)

Who is an “employer”?

s 10 amd 1995 No. 57 s 4 sch 1

Employer to help workplace health and safety representatives

s 77 amd 1995 No. 57 s 4 sch 1

Receipt for seized things

s 112 amd 1995 No. 57 s 4 sch 1

False, misleading or incomplete documents

s 172 amd 1995 No. 57 s 4 sch 1

PART 17—TRANSITIONAL PROVISIONS AND REPEALS

Division 1—Definitions

div 1 (s 189) exp 1 July 1996 (see s 189(3))

AIA s 20A applies (see s 189(2))

Existing regulations

s 190 sub 1995 No. 57 s 4 sch 1

exp 1 July 1996 (see s 190(6))

Existing codes of practice

s 191 sub 1995 No. 57 s 4 sch 1
exp 1 July 1996 (see s 191(5))

Existing exemptions

s 192 exp 1 July 1996 (see s 192(5))

Existing industry workplace health and safety committees and members of the committees

s 193 exp 1 July 1996 (see s 193(4))
AIA s 20A applies (see s 193(3))

Existing health and safety officers

s 194 exp 1 July 2000 (see s 194(3))

Existing health and safety representatives

s 195 exp 1 July 1996 (see s 195(3))
AIA s 20A applies (see s 195(2))

Existing health and safety committees

s 196 exp 1 July 1996 (see s 196(3))
AIA s 20A applies (see s 196(2))

Existing inspectors and acting inspectors

s 197 exp 31 December 1995 (see s 197(4))

Existing accredited officers

s 198 exp 31 December 1995 (see s 198(4))

Continuation of improvement, prohibition and seizure notices

s 199 exp 1 July 1996 (see s 199(5))
AIA s 20A applies (see s 199(4))

Existing certificates

s 200 exp 1 July 1996 (see s 200(4))
AIA s 20A applies (see s 200(3))

Existing registrations continue

s 201 exp 1 July 1996 (see s 201(4))
AIA s 20A applies (see s 201(3))

Approved methods of work

s 202 exp 1 July 1997 (see s 202(4))

Existing exemptions under s 110(2)(b) of former Act

s 203 exp 1 July 1996 (see s 203(4))
AIA s 20A applies (see s 203(3))

Appeals under former Act may be continued

s 204 exp 1 January 1996 (see s 204(3))

Workplace Health and Safety Act 1989 references

s 204A ins 1995 No. 57 s 4 sch 1

Transitional regulations

s 205 exp 1 July 1996 (see s 205(3))

Division 3—Repeals**div hdg** om R1 (see RA s 7(1)(k))**Repeals****s 206** om R1 (see RA s 40)**SCHEDULE 2—SPECIFIED HIGH RISK PLANT****Definitions for schedule****s 2** def “**gas cylinder**” amd 1995 No. 57 s 4 sch 1**SCHEDULE 3—DICTIONARY**def “**public place**” amd 1995 No. 57 s 4 sch 1