



# **Workplace Health and Safety Act 1995**

**Reprinted as in force on 18 November 2004**

**Reprint No. 5D revised edition**

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This Act is reprinted as at 18 November 2004. 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. Also see list of legislation for any uncommenced amendments.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 have also been made to use aspects of format and printing style consistent with current drafting practice (s 35).

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of 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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Revised edition indicates further material has affected existing material. For example—

- a correction
- a retrospective provision
- other relevant information.



Queensland

# Workplace Health and Safety Act 1995

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# **Workplace Health and Safety Act 1995**

[as amended by all amendments that commenced on or before 18 November 2004]

**An Act about workplace health and safety, and for related purposes**

## **Part 1 Preliminary**

### **Division 1 Introduction**

#### **1 Short title**

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

### **Division 2 Application and operation of Act**

#### **3 Application of Act**

- (1) This Act does not apply to—
  - (a) a coal mine to which the *Coal Mining Safety and Health Act 1999* applies; or
  - (b) a mine to which the *Mining and Quarrying Safety and Health Act 1999* 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 1999*
  - *Public Safety Preservation Act 1986*
  - *Radiation Safety Act 1999*
  - *Transport Operations (Road Use Management) Act 1995*
  - *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.

### **3A Relationship with Electrical Safety Act 2002**

- (1) This section applies if—
- (a) this Act, in the absence of this section, would have application in particular circumstances; and
  - (b) the *Electrical Safety Act 2002* also has application in the circumstances.
- (2) This Act does not have application in the circumstances to the extent that the *Electrical Safety Act 2002* has application.
- (3) Without limiting subsection (2), to the extent that this Act would impose on a person a workplace health and safety obligation that is concurrent with an electrical safety obligation imposed on the person under the *Electrical Safety Act 2002*, the workplace health and safety obligation does not apply to the person.

*Example for subsection (3)—*

Section 28 of this Act imposes an obligation on an employer to ensure the workplace health and safety of each of the employer's workers. Under the *Electrical Safety Act 2002*, an obligation is imposed on an employer to ensure the employer's business or undertaking is conducted in a way that is electrically safe. Accordingly, the employer's obligation under this Act to ensure the workplace health and safety of each of the employer's workers does not include an obligation to ensure the employer's business or undertaking is conducted in a way that is electrically safe.

**4 Act binds all persons**

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.

**5 What does this Act apply to?**

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

**6 Who does this Act apply to?**

This Act applies to—

- (a) everyone who may affect the health and safety of others because of workplaces, work activities or specified high risk plant; and
- (b) everyone whose health and safety may be affected by workplaces, work activities or specified high risk plant.

**Division 3 Objective of Act****7 Objective of Act**

- (1) The objective of this Act is to prevent a person's death, injury or illness being caused by a workplace, by work activities or by specified high risk plant.

*Example of an illness caused by a workplace—*

Asthma caused by inhaling spray paint mist from a neighbouring workplace.

*Example of an illness caused by a work activity—*

Carbon monoxide poisoning caused by a liquefied petroleum gas operated forklift being used in a coldroom.

*Example of an illness caused by specified high risk plant—*

Legionnaire's disease caused by inhaling legionella bacteria from the contaminated cooling tower of an air conditioning unit.

- (2) The objective is achieved by preventing or minimising a person's exposure to the risk of death, injury or illness caused

*Workplace Health and Safety Act 1995*

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by a workplace, by work activities or by specified high risk plant.

- (3) This Act establishes a framework for preventing or minimising exposure to risk by—
  - (a) imposing workplace health and safety obligations on certain persons who may affect the health and safety of others by their acts or omissions; and
  - (b) establishing benchmarks for industry through the making of regulations and codes of practice; and
  - (c) establishing a workplace health and safety board—
    - (i) to allow industry to participate in developing strategies for improving workplace health and safety; and
    - (ii) to promote community awareness about workplace health and safety; and
  - (d) providing for industry participation in workplace health and safety by industry developing their own codes of practice; and
  - (e) providing for the election of workplace health and safety representatives, and the establishment of workplace health and safety committees, to foster cooperation between employers, principal contractors, and workers; and
  - (f) providing for the appointment of—
    - (i) workplace health and safety officers to assist employers and principal contractors to manage workplace health and safety; and
    - (ii) accredited providers to assist industry in managing particular risks; and
    - (iii) inspectors to monitor and enforce compliance with this Act.
- (4) The achievement of this Act's objective will help—
  - (a) reduce the human cost to individuals, families and the community caused by these deaths, injuries and illnesses; and



- (b) reduce the financial burden on individuals, families and the community caused by these deaths, injuries and illnesses; and
- (c) reduce the burden on the workers' compensation scheme caused by these deaths, injuries and illnesses, which in turn reduces costs imposed on industry; and
- (d) maintain the community standard for workplace health and safety, which is eroded when persons gain an unfair competitive advantage by not implementing appropriate standards.

## **Division 4            Interpretation**

### **Subdivision 1        Dictionary**

#### **8            Definitions—the dictionary**

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

### **Subdivision 2        Other important terms**

#### **9            What is a *workplace*?**

A *workplace* is any place where work is, or is to be, performed by—

- (a) a worker; or
- (b) a person conducting a business or undertaking.

*Examples—*

- 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

**10 Who is an *employer*?**

- (1) A person is an *employer* if—
  - (a) the person conducts a business or undertaking; and
  - (b) in the conduct of the business or undertaking, the person engages someone else to do work, other than under a contract for services, for or at the direction of the person.
- (2) For subsection (1)(b), a person engages someone else to do work whether the person engaged works for gain or reward or on a voluntary basis.
- (3) For an apprentice or trainee who is employed by a group training organisation, the employer is—
  - (a) when the apprentice or trainee is engaged to do work for a host employer—the host employer; or
  - (b) otherwise—the group training organisation.
- (4) In this section—

*apprentice* means an apprentice under the *Vocational Education, Training and Employment Act 2000*.

*group training organisation* means a group training organisation under the *Vocational Education, Training and Employment Act 2000*.

*host employer* means a person who contracts with a group training organisation for the training of apprentices and trainees.

*trainee* means a trainee under the *Vocational Education, Training and Employment Act 2000*.

**11 Who is a *worker*?**

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

*Example of subsection (1)—*

A subcontractor works under a contract for services 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.

**12 Who is a *self-employed person*?**

A person is a *self-employed person* if—

- (a) the person conducts a business or undertaking for gain or reward; and
- (b) in the conduct of the business or undertaking, the person is not an employer or worker.

**13 Who is the *principal contractor*?**

- (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.

**13A What is *construction work*?**

Work is *construction work* if it is—

- (a) building work; or
- (b) civil construction work; or
- (c) demolition work.

**14 What is a *construction workplace*?**

- (1) A *construction workplace* is a workplace where construction work is done, but only to the extent the construction work is—
  - (a) building work or civil construction work for which the estimated final price at practical completion is, including any GST payable in relation to the supply of the work, more than \$80 000; or
  - (b) demolition work.

- (2) A workplace becomes a construction workplace from the beginning of the day when the 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.

### **15 When is plant or a substance not *used properly*?**

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

## **Subdivision 3 Persons in control of relevant workplace areas and fixtures, fittings and plant in relevant workplace areas**

### **15A Meaning of *relevant workplace area***

A *relevant workplace area* is—

- (a) any building or other structure, or a part of a building or other structure, used as a workplace; and
- (b) any area adjacent to the building or other structure or part associated with the use of the building or other structure or part as a workplace.

*Examples of areas that could be adjacent to a building or other structure or part and associated with its use as a workplace—*

- 1 Shopping centre car park.
- 2 Common area in a shopping centre.
- 3 Hotel beer garden.
- 4 Outside play area for a child care centre.

**15B Meaning of *person in control* of relevant workplace area**

- (1) The *person in control*, of a relevant workplace area, is the person who is the owner of the relevant workplace area.
- (2) However, if there is in place a lease, contract or other arrangement that provides, or has the effect of providing, for another person to have effective and sustained control of the relevant workplace area, the other person, and not the owner, is the *person in control* of the relevant workplace area.

**15C Meaning of *person in control* of fixtures, fittings or plant**

- (1) The *person in control*, of fixtures, fittings or plant included in a relevant workplace area, is the person who is the owner of the relevant workplace area.
- (2) However, if there is in place a contract or other arrangement that provides, or has the effect of providing, for another person to have effective and sustained control of the fixtures, fittings or plant, the other person, and not the owner of the relevant workplace area, is the *person in control* of the fixtures, fittings or plant.

## **Part 2 Basic concepts**

**17 When is a self-employed person performing work?**

- (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.

**18 What is consultation?**

- (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 the workplace health and safety board and industry sector standing 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.

**22 Ensuring workplace health and safety**

- (1) Workplace health and safety is ensured when persons are free from—
  - (a) death, injury or illness caused by any workplace, work activities or specified high risk plant; and
  - (b) risk of death, injury or illness created by any workplace, work activities or specified high risk plant.
- (2) Workplace health and safety can generally be managed by—
  - (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.
- (3) However, this Act also specifies particular ways in which workplace health and safety must be ensured in particular circumstances.

- (4) Compliance with subsection (2) does not excuse a person from an obligation to ensure workplace health and safety or a particular obligation imposed on the person under this Act.

## **Part 3                      Workplace health and safety obligations**

### **Division 1                Preliminary**

#### **23            Obligations for workplace health and safety**

- (1) The following persons have obligations under division 2 for workplace health and safety—
- employers
  - self-employed persons
  - persons who conduct a business or undertaking, whether or not as an employer or self-employed person
  - persons in control of workplaces
  - principal contractors
  - designers, manufacturers and suppliers of plant
  - erectors and installers of certain plant
  - manufacturers and suppliers of substances
  - designers of buildings or other structures to be used as workplaces
  - persons in control of relevant workplace areas
  - persons in control of fixtures, fittings or plant included in relevant workplace areas
  - owners of specified high risk plant.
- (2) Workers and other persons at workplaces have obligations under division 3 for workplace health and safety.

**24 Discharge of obligations**

- (1) A person on whom a workplace health and safety obligation is imposed must discharge the obligation.  
Maximum penalty—
  - (a) if the breach causes multiple deaths—2 000 penalty units or 3 years imprisonment; or
  - (b) if the breach causes death or grievous bodily harm—1 000 penalty units or 2 years imprisonment; or
  - (c) if the breach causes bodily harm—750 penalty units or 1 year's imprisonment; or
  - (d) if the breach involves exposure to a substance likely to cause death or grievous bodily harm—750 penalty units or 1 year's imprisonment; or
  - (e) otherwise—500 penalty units or 6 months imprisonment.
- (2) Subsection (1) applies despite Criminal Code, sections 23 and 24.<sup>1</sup>

**24A Charges for offences against s 24**

- (1) This section applies to an offence against section 24 for a failure to discharge an obligation under section 28, 29 or 29A.
- (2) A complaint against a person for the offence may allege in the alternative that the person committed the offence as an employer, as a self-employed person or as a relevant person under section 29A.
- (3) A person may be convicted on the complaint on proof that the person committed the offence either as an employer or as a self-employed person or as a relevant person under section 29A without further proof of the capacity in which the person committed the offence.

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<sup>1</sup> 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.



- (4) Also, a person charged with a failure to discharge an obligation under 1 of the following sections may be convicted of a failure to discharge an obligation under either of the other sections that is proved by the evidence—
- (a) section 28;
  - (b) section 29;
  - (c) section 29A.

## **25 Person may owe obligations in more than 1 capacity**

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.

## **26 How obligations can be discharged if regulation etc. made**

- (1) If a regulation or ministerial notice 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 regulation or ministerial notice 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 a code of practice states a way of managing exposure to a risk, a person discharges the person's workplace health and safety obligation for exposure to the risk only by—
  - (a) adopting and following a stated way that manages exposure to the risk; or

- (b) adopting and following another way that gives the same level of protection against the risk.<sup>2</sup>

**27 How obligations can be discharged if no regulation etc. made**

- (1) This section applies if there is not a regulation or ministerial notice prescribing a way to prevent or minimise exposure to a risk, or a code of practice stating a way to 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**

**28 Obligations of employers**

- (1) An employer has an obligation to ensure each of the employer's workers is not exposed to risks to their health and safety arising out of the conduct of the employer's business or undertaking.
- (2) An employer has an obligation to ensure the employer is not exposed to risks to their health and safety arising out of the conduct of the employer's business or undertaking.
- (3) An employer has an obligation to ensure other persons are not exposed to risks to their health and safety arising out of the conduct of the employer's business or undertaking.

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<sup>2</sup> For this section and the following section, see the defences provided under division 4.

**29 Obligations of self-employed persons**

- (1) A self-employed person has an obligation to ensure the self-employed person is not exposed to risks to their health and safety arising out of the conduct of the self-employed person's business or undertaking.
- (2) A self-employed person has an obligation to ensure other persons are not exposed to risks to their health and safety arising out of the conduct of the self-employed person's business or undertaking.

**29A Obligations of persons conducting business or undertaking**

- (1) A person (the *relevant person*) who conducts a business or undertaking has an obligation to ensure each person who performs a work activity for the purposes of the business or undertaking is not exposed to risks to their health and safety.
- (2) The obligation applies—
  - (a) whether or not the relevant person conducts the business or undertaking as an employer or self-employed person; and
  - (b) whether or not the business or undertaking is conducted for gain or reward; and
  - (c) whether or not a person who performs a work activity for the purposes of the business or undertaking works on a voluntary basis.

*Example of obligation under this section—*

A person who conducts a business or undertaking contracts with a supplier of labour to obtain the services of the supplier's employees to perform a work activity for the purposes of the business or undertaking. As well as any obligation the person may have under section 28 to ensure the person's own employees, if any, are not exposed to risks to their health and safety, the person also has, under this section, an obligation to ensure the labour hire employees are not exposed to risks to their health and safety while they are performing the work activity.

**29B What obligations under ss 28–29A may include**

Without limiting sections 28 to 29A (the *relevant sections*), an obligation under a relevant section may, having regard to

the circumstances of any particular case, include 1 or more of the following—

- (a) identifying hazards, assessing risks that may result because of the hazards, deciding on control measures to prevent, or minimise the level of, the risks, implementing control measures and monitoring and reviewing the effectiveness of the measures;
- (b) providing and maintaining a safe and healthy work environment;
- (c) providing and maintaining safe plant;
- (d) ensuring the safe use, handling, storage and transport of substances;
- (e) ensuring safe systems of work;
- (f) providing information, instruction, training and supervision to ensure health and safety.

### **30 Obligations of persons in control of workplaces**

- (1) A person in control of a workplace has the following obligations—
  - (a) to ensure the risk of injury or illness from a workplace is minimised for persons coming onto the workplace to work;
  - (b) to ensure the risk of injury or illness 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.

**31 Obligations of principal contractors**

- (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 persons at the workplace are not exposed to risks from—
    - (i) something that has been provided for the general use of persons at the workplace for which no other person owes a workplace health and safety obligation; or
    - (ii) a hazard at the workplace for which no other person owes a workplace health and safety obligation;
  - (c) to ensure that work activities at the workplace are safe and without risk of injury or illness to members of the public at or near the workplace;
  - (d) to provide safeguards and take safety measures prescribed under a regulation 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.<sup>3</sup>

### **32 Obligations of designers of plant**

- (1) A designer of plant for use at a relevant place for the plant has an obligation to ensure that—
- (a) the plant is designed to be safe and without risk to health when used properly; and
  - (b) if the designer gives the design to another entity that is to give effect to the design, the design is accompanied by information about the way the plant must be used to ensure health and safety.
- (2) Also, a designer of plant for use at a relevant place for the plant has an obligation to take the action the chief executive reasonably requires to prevent the use of unsafe plant anywhere.

### **32A Obligations of manufacturers of plant**

- (1) A manufacturer of plant for use at a relevant place for the plant has an obligation to ensure that—
- (a) the plant is manufactured to be safe and without risk to health when used properly; and
  - (b) the plant, when manufactured, is tested and examined to ensure it has been manufactured to be safe and without risk to health when used properly; and

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<sup>3</sup> See section 36(a) (Obligations of workers and other persons at a workplace) for the obligation to comply with the instructions given for workplace health and safety at the workplace by the principal contractor.

- (c) the plant, when supplied to another person, is accompanied by information about the way the plant must be used to ensure health and safety.
- (2) Also, a manufacturer of plant for use at a relevant place for the plant has an obligation to take the action the chief executive reasonably requires to prevent the use of unsafe plant anywhere.

### **32B Obligations of suppliers of plant**

- (1) A supplier of new plant for use at a relevant place for the plant has an obligation—
  - (a) either—
    - (i) to examine and test the plant to ensure the plant is safe and without risk to health when used properly; or
    - (ii) to ensure the manufacturer of the plant has given an assurance that the plant has been examined and tested to ensure it is safe and without risk to health when used properly; and
  - (b) to ensure the plant is accompanied by information about the way the plant must be used to ensure health and safety.
- (2) A supplier of used plant for use at a relevant place for the plant has an obligation—
  - (a) to take all reasonable steps to ensure the plant is safe and without risk to health when used properly; and  
*Example of reasonable steps a supplier of used plant might take—*
    - A reasonable step for a supplier to take might be to examine and test the plant to establish that it will be safe and without risk to health when used properly.
  - (b) to ensure the plant is accompanied by information about the way the plant must be used to ensure health and safety, if the information is available.
- (3) Also, a supplier of plant for use at a relevant place for the plant has an obligation to take the action the chief executive

reasonably requires to prevent the use of unsafe plant anywhere.

- (4) Despite subsections (1)(b) and (2)(b), if the supplier is supplying plant by hiring it to another person, the supplier is obliged only to have the information available at the point of hire.
- (5) In this section—  
*supplier* does not include a manufacturer when supplying, but does include an importer when supplying.

### **33 Obligations of erectors and installers of plant**

An erector or installer of plant at a relevant place for the plant 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.

### **34 Obligations of manufacturers of substances for use at workplace**

- (1) A manufacturer of a substance for use at a workplace has an obligation to ensure that—
  - (a) the substance is safe and without risk to health when used properly; and
  - (b) the substance is tested and examined to ensure it is safe and without risk to health when used properly; and
  - (c) the substance, when supplied to another person, is accompanied by relevant information for the substance.
- (2) Also, a manufacturer of a substance for use at a workplace has an obligation to take the action the chief executive reasonably requires to prevent the use of an unsafe substance at a workplace.



**34A Obligations of suppliers of substances for use at workplace**

- (1) A supplier of a substance for use at a workplace has an obligation to—
  - (a) take all reasonable steps to ensure the substance is safe and without risk to health when used properly; and
  - (b) to ensure the substance is accompanied by relevant information for the substance.
- (2) Also, a supplier of a substance for use at a workplace has an obligation to take the action the chief executive reasonably requires to prevent the use of an unsafe substance at a workplace.
- (3) In this section—

*supplier* does not include a manufacturer when supplying, but does include an importer when supplying.

**34B Obligation of designer of building or other structure used as a workplace**

- (1) A person (the *designer*) who designs a building or other structure, or a part of a building or other structure, intended to be used as a workplace has an obligation to ensure that, when the building or other structure or part has been constructed and is being used as a workplace and for the purpose for which it was designed, relevant persons for the building or other structure or part will not be exposed to risk to their health or safety arising out of the design of the building or other structure or part.

*Examples of matters that might be considered in discharging a building designer's obligation under this section—*

- 1 Availability of anchorage points for window cleaners.
  - 2 Adequacy of ventilation.
  - 3 Adequacy of lighting in plant rooms.
  - 4 Ease of access to the building for maintenance purposes.
  - 5 Provision for maintenance and servicing of airconditioning units.
- (2) For deciding, after the building or other structure or part has been designed, whether the designer discharged the designer's

workplace health and safety obligation under subsection (1), regard must be had to the standards of design prevailing when the designer designed the building or other structure or part.

- (3) The designer's obligation under subsection (1) applies only to the extent that the content of the design of the building or other structure or part falls under the control of the designer.
- (4) In this section—

*relevant persons*, for a building or other structure, or a part of a building or other structure, means the persons for whom the building or other structure or part is a workplace, including persons who maintain or repair—

- (a) the building or other structure or part; or
- (b) fixtures, fittings or plant included in the building or other structure or part.

*workplace* does not include a workplace to the extent it is also domestic premises.

### **34C Obligation of person in control of relevant workplace area**

- (1) The person in control of a relevant workplace area has an obligation to ensure the relevant workplace area is safe and without risk to health.
- (2) This section does not apply to a relevant workplace area to the extent that the relevant workplace area is also the domestic premises of the person in control of the relevant workplace area.

### **34D Obligation of person in control of fixtures, fittings or plant included in relevant workplace area**

- (1) The person in control of fixtures, fittings or plant included in a relevant workplace area has an obligation to ensure the fixtures, fittings or plant are safe and without risk to health.
- (2) This section does not apply to a relevant workplace area to the extent that the relevant workplace area is also the domestic premises of the person in control of the relevant workplace area.

**35 Obligations of owners of specified high risk plant**

An owner of specified high risk plant<sup>4</sup> 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.

**Division 3 Obligations of workers and other persons****36 Obligations of workers and other persons at a workplace**

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.

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<sup>4</sup> *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 4                      Defences**

### **37            Defences for div 2 or 3**

- (1) It is a defence in a proceeding against a person for a contravention of an obligation imposed on the person under division 2 or 3<sup>5</sup> for the person to prove—
  - (a) if a regulation or ministerial notice has been made about the way to prevent or minimise exposure to a risk—that the person followed the way prescribed in the regulation or notice to prevent the contravention; or
  - (b) if a code of practice has been made stating a way or ways to manage exposure to a risk—
    - (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 managed exposure to the risk and took reasonable precautions and exercised proper diligence to prevent the contravention; or
  - (c) if no regulation, ministerial notice, or code of practice 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 regulation, ministerial notice, or code of practice is a reference to the regulation, notice, or code of practice in force at the time of the contravention.

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5    Division 2 (Obligations of employers and others) or 3 (Obligations of workers and other persons)

## Part 4                      Regulations, codes of practice and ministerial notices

### Division 1                Regulations

#### 38            Regulations

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may—
  - (a) deal with matters of an administrative nature; or
  - (b) prohibit exposure to risk; or
  - (c) prescribe ways to prevent or minimise exposure to risk.

*Examples of matters under paragraph (a)—*

- 1 Notification of building and construction work.
- 2 Registration of registrable plant.

*Examples of paragraph (b)—*

Prohibiting the use of certain hazardous substances.

*Examples of paragraph (c)—*

- 1 Preparing and providing a material safety data sheet for a hazardous substance.
  - 2 Providing certain workplace amenities.
- (3) A regulation may—
  - (a) prescribe offences for a breach of a regulation; and
  - (b) fix a maximum penalty of not more than 40 penalty units for the breach.
- (4) A regulation may declare something to be a workplace health and safety obligation imposed on a person for this Act.
- (5) A regulation may prescribe fees payable under this Act.
- (6) The provisions of the *Workplace Health and Safety Regulation 1997* as made and as amended from time to time prescribing fees payable under this Act are taken to be, and always to have been, as validly made as they would be, or

would have been, if this Act had always authorised the Governor in Council to make a regulation prescribing fees payable under this Act.

- (7) Without limiting subsection (5) or (6), the power to make a regulation to prescribe fees payable includes, and is declared to have always included, the power to prescribe fees payable for the following—
- (a) notification of building and construction work;
  - (b) registrations, including registrations for registrable workplaces and registrable plant;
  - (c) certifications, including certifications for prescribed occupations;
  - (d) appointments, including appointments as accredited providers.

## **Division 2                      Codes of practice**

### **41                      Code of practice about managing exposure to risks**

- (1) The Minister may make a code of practice that states ways to manage exposure to risks common to industry or a part of industry.

*Example of a code of practice—*

A code of practice about managing noise exposure may provide advice about identifying sources of noise, assessing actual or potential levels of noise exposure and eliminating or minimising noise exposure as a risk to health at a workplace.

*Example of a part of industry—*

- 1 the rural sector
  - 2 canegrowing within the rural sector
- (2) The Minister must notify the making of a code of practice.
- (3) A code of practice expires 10 years after its commencement.
- (4) The Minister must ensure that a copy of each code of practice and any document applied, adopted or incorporated by the code of practice is made available for inspection, without

charge, during normal business hours at each department office dealing with workplace health and safety.

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

## **42 Use of code of practice in proceedings**

In a proceeding under this Act, a document purporting to be a code of practice is admissible as evidence of the code of practice 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 manage exposure to a risk; and
- (c) the code of practice is about managing the exposure to the risk.

## **Division 3 Ministerial notices**

### **42C Ministerial notices in urgent circumstances**

- (1) This section applies if the Minister considers—
  - (a) a situation has arisen, or is likely to arise—
    - (i) at or near a workplace because of a work activity; or
    - (ii) at any place because of specified high risk plant; and
  - (b) because of the situation, there is, or is likely to be, a risk of serious bodily injury<sup>6</sup> to someone.
- (2) The Minister may make a notice about the situation.
- (3) The notice may prescribe methods of work or other things to prevent or minimise exposure to the risk.
- (4) A notice expires—

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<sup>6</sup> See schedule 3 (Dictionary) for definition of *serious bodily injury*.





undertaking, accept the workplace health and safety undertaking.

- (2) When the chief executive accepts the workplace health and safety undertaking, the undertaking—
  - (a) starts operating; and
  - (b) becomes enforceable against the identified person.
- (3) The chief executive may publish details of the undertaking.

#### **42F Proceeding for alleged contravention**

- (1) If a proceeding for the alleged contravention for the workplace health and safety undertaking has been started before an industrial magistrate against the identified person for the undertaking before the undertaking starts operating, the chief executive must take the necessary action to bring the proceeding to an end.
- (2) If a proceeding for the alleged contravention has not been started before the undertaking starts operating, a proceeding for the alleged contravention must not be started.

#### **42G Compliance with undertaking**

The identified person for an operating workplace health and safety undertaking must not contravene the undertaking.

Maximum penalty—1 000 penalty units.

#### **42H Withdrawal or variation of undertaking**

- (1) The identified person for an operating workplace health and safety undertaking may at any time, with the agreement of the chief executive—
  - (a) withdraw the undertaking; or
  - (b) change the provisions of the undertaking.
- (2) However, the provisions of the undertaking can not be changed to provide for a different alleged contravention for the undertaking.

**42I    Contravention of workplace health and safety undertaking**

- (1) This section applies if the chief executive considers the identified person for an operating workplace health and safety undertaking has contravened the undertaking.
- (2) The chief executive may apply to an industrial magistrate for an order under this section.
- (3) If the magistrate is satisfied the identified person has contravened the undertaking, the magistrate may make 1 or more of the following orders—
  - (a) an order directing the identified person to comply with the undertaking, or a stated aspect of the undertaking, or to comply with the undertaking, or a stated aspect of the undertaking, in a stated way;
  - (b) an order directing the person to pay to the State an amount that is not more than the direct or indirect financial benefit obtained by the person from, and reasonably attributable to, the breach;
  - (c) an order directing the person to give a security bond to the State for a stated period;
  - (d) another order the magistrate considers appropriate in the circumstances.
- (4) A prosecution for the offence of contravening the workplace health and safety undertaking does not prevent the magistrate from making an order under this section on the chief executive's application, even though the prosecution and the order are based on the same facts and circumstances.
- (5) The making of an order under this section, unless the order otherwise provides, does not prevent a prosecution for the offence of contravening the workplace health and safety undertaking, even though the order and the prosecution are based on the same facts and circumstances.

## **Part 6**                      **Industry consultative arrangements**

### **Division 1**                **Purposes of part**

#### **43**        **Purposes of part**

The purposes of this part are—

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

### **Division 2**                **The board and its functions**

#### **44**        **Workplace health and safety board**

The workplace health and safety board (the *board*) is established.

#### **45**        **Functions of board**

- (1) The primary function of the board is to give advice and make recommendations to the Minister about policies, strategies, allocation of resources, and legislative arrangements, for workplace health and safety.
- (2) Without limiting subsection (1), the board may discharge its primary functions by—
  - (a) developing a 5 year strategic plan for improving workplace health and safety; and
  - (b) examining whether the 5 year strategic plan meets the existing and future needs of industry and the community; and
  - (c) advising the Minister about state, national and international workplace health and safety issues; and
  - (d) considering other issues referred to it by the Minister; and

- (e) reviewing the appropriateness of provisions of this Act, a regulation, or code of practice; and
  - (f) considering recommendations made to it by an industry sector standing committee; and
  - (g) reviewing the performance of an industry sector standing committee; and
  - (h) recommending to the Minister the establishment of industry sector standing committees; and
  - (i) reviewing the membership of an industry sector standing committee; and
  - (j) establishing working parties on the recommendation of an industry sector standing committee; and
  - (k) deciding procedures for the operation of working parties; and
  - (l) appointing members to a working party; and
  - (m) considering the most effective and efficient way of applying funds allocated for workplace health and safety; and
  - (n) ensuring industry has been adequately consulted on proposed codes of practice; and
  - (o) promoting workplace health and safety to industry and the community to encourage a healthy and safe culture at workplaces.
- (3) The chief executive must give the board reasonable help to enable it to perform its functions.

**45A Annual report**

- (1) As soon as practical, but within 4 months, after the end of each financial year, the board must prepare and give to the Minister a report on the board's operations for the year.
- (2) The Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after receiving it.

## **Division 3                    Membership and conduct of board proceedings**

### **46            Membership of board**

- (1) The board consists of a chairperson, and at least 6 other members, appointed by the Minister.
- (2) The person the Minister appoints as chairperson must be representative of industry.
- (3) In appointing a person as a member, the Minister must consider the person's practical experience, and competence, in the management of workplace health and safety.
- (4) The Minister must ensure the number of members representing employers equals the number of members representing workers.
- (5) The Minister must seek to appoint both men and women members to the board.

### **47            Times of board meetings**

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

### **48            Conduct of proceedings**

- (1) The chairperson of the board presides at all board 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 board—
  - (a) a quorum is at least 4 members; 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 board may otherwise conduct its proceedings (including its meetings) as it considers appropriate.
  - (5) The board 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 board meeting under a permission under subsection (5) is taken to be present at the meeting.
  - (7) A resolution is a valid resolution of the board, even though it is not passed at a board 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 board.

#### **49 Disclosure of interests**

- (1) If a member reasonably believes, or should reasonably believe, that an issue being considered or about to be considered by the board 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 board.
- (2) The disclosure must be recorded in the board's minutes and, unless the board otherwise directs, the member must not be present when the board considers the issue, or take part in a decision of the board on the issue.
- (3) If, because of this section, a member is not present at a meeting of the board for the deliberation of the board about an issue, but there would be a quorum if the member were present, the remaining members present are a quorum for the board'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.

## **50 Minutes**

The board must keep minutes of its proceedings.

## **Division 4 Provisions about appointed board members**

### **52 Duration of appointment**

- (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 board; 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.

### **53 Leave of absence**

- (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.

**54 Conditions of appointment**

- (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 sector standing committees****55 Industry sector standing committees**

- (1) The following industry sector standing committees of the board are established—
  - (a) construction sector standing committee;
  - (b) manufacturing sector standing committee;
  - (c) rural sector standing committee;
  - (d) health and community services sector standing committee;
  - (e) retail and wholesale sector standing committee;
  - (f) transport and storage sector standing committee.
- (2) Also, the Minister may, by gazette notice, establish other industry sector standing committees for industry sectors.

**56 Functions of industry sector standing committees**

- (1) The primary function of an industry sector standing committee is to give advice and make recommendations to the workplace health and safety board about workplace health and safety in the industry sector for which the committee is established.
- (2) Without limiting subsection (1), the committee may discharge its primary function by—
  - (a) examining the appropriateness of, and need for, setting workplace health and safety standards; and
  - (b) considering issues referred to it by the board; and



- (c) recommending to the board that working parties be established to respond to workplace health and safety issues; and

*Examples of responses under paragraph (c)—*

- 1 Developing a code of practice.
  - 2 Organising a workplace health and safety promotional program.
- (d) recommending to the board who should be a member of a working party; and
  - (e) recommending to the board procedures for the operation of working parties.

## **Division 6                      Membership and conduct of industry sector standing committee proceedings**

### **57            Membership of industry sector standing committee**

- (1) An industry sector standing committee consists of a chairperson, and at least 6 other members, appointed by the Minister.
- (2) In appointing a person as a member, the Minister must consider the person's practical experience, and competence, in the management of workplace health and safety.
- (3) The Minister must ensure the number of members representing employers equals the number of members representing workers.
- (4) The Minister must seek to appoint both men and women members to the committee.

### **58            Times of industry sector standing committee meetings**

- (1) An industry sector standing 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 third of the other members.
- (4) Also, the Minister or the board may call a meeting of the committee at any time.

**59 Conduct of industry sector standing committee proceedings**

- (1) The chairperson of an industry sector standing 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; 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 sector standing committee may otherwise conduct its proceedings (including its meetings) as it considers appropriate.
- (5) An industry sector standing 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 sector standing 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 sector standing committee, even though it is not passed at an industry sector standing 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 sector standing committee.

## **60 Disclosure of interests**

- (1) If a member reasonably believes, or should reasonably believe, that an issue being considered or about to be considered by the industry sector standing 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 sector standing 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 sector standing 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.

## **61 Minutes**

An industry sector standing committee must keep minutes of its proceedings.

## **Division 7 Provisions about industry sector standing committee members**

### **62 Duration of appointment**

- (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.

### **63 Leave of absence**

- (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.

### **64 Conditions of appointment**

- (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**

#### **65**      **Purposes of part**

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**

#### **66**      **Definitions for part**

In this part—

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

***union*** means an employee association registered, or taken to be registered, as an organisation under the *Industrial Relations Act 1999*.

## **Division 3                      Workplace health and safety representatives**

### **Subdivision 1              Preliminary**

#### **67              Who is a workplace health and safety representative?**

- (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.

#### **68              How many workplace health and safety representatives can a workplace have?**

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.

#### **69              Workplace health and safety representative's *area of representation***

- (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.

**70 Negotiation between workers and employer about workplace health and safety representatives**

- (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, it is declared that if the workers are members of more than 1 union, each of the unions asked may be involved in the negotiations.
- (4) The Queensland Industrial Relations Commission may hear and decide, as an industrial matter, an application by a person aggrieved by the failure of a negotiation under subsection (1).
- (5) Subsection (4) must be read with the *Industrial Relations Act 1999*.

## **Subdivision 2 Election process**

### **71 Electing a workplace health and safety representative**

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

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

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.

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

- (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.



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

- (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.

**75 Employers to be told of elected workplace health and safety representatives**

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****76 Employer must negotiate with workers if asked**

- (1) An employer must, if asked by the employer's workers, negotiate with the workers about workplace health and safety representatives for the workplace.<sup>9</sup>

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.

**77 Employer to help workplace health and safety representatives**

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

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<sup>9</sup> Examples of some matters for negotiation may be found at section 70 (Negotiation between workers and employer about workplace health and safety representatives).

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.

## **78 Employer to tell workplace health and safety representatives about certain things**

- (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 workplace incident 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.

## **79 Employer to display identity of workplace health and safety representatives**

- (1) An employer must display, in accordance with this section, a notice advising the identity of each workplace health and safety representative for the workplace.

Maximum penalty—10 penalty units.

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

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

- (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**

**81 Entitlements of workplace health and safety representatives**

- (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

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- (b) to be told by the representative's employer of any workplace incident 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 workplace incidents 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; and
  - (o) to attend a training course prescribed under a regulation, and refresher courses for the training course, and to have all reasonable costs of the representative's attendance at the courses, including course fees and the representative's usual remuneration, met by the employer.
- (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**

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

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.

### **83      Workplace health and safety representatives may be re-elected**

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

**84 Term as workplace health and safety representative**

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.

**85 Ceasing to be a workplace health and safety representative**

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****86 Workplace health and safety committees**

- (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 officer<sup>10</sup> 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.

## **87 Membership of committee**

- (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.

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<sup>10</sup> For information about workplace health and safety officers, see part 8 (Workplace health and safety officers).

**88 Times of meetings**

- (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.

**89 Proceedings at meetings**

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

**90 Functions of workplace health and safety committees**

- (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 workplace incidents 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**

#### **91                      Purpose of part**

The purpose of this part is to provide for the appointment and functions of workplace health and safety officers.<sup>11</sup>

### **Division 2                      Definition for part**

#### **92                      Meaning of *qualified person***

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.

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<sup>11</sup> For the meaning of *workplace health and safety officer* see the dictionary.

## Division 3                      Appointment of workplace health and safety officers

### 93            Appointment of workplace health and safety officer by employer

- (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.

- (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.

### 94            Appointment of workplace health and safety officer by principal contractor

- (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**

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

- (1) An employer or principal contractor must display, in accordance with this section, 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.
- (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.

## **Division 5                      Functions of workplace health and safety officers**

### **96            Functions of workplace health and safety officers**

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 workplace incidents at the workplace;
- (f) to help inspectors in the performance of the inspectors' duties;
- (g) if any workplace incident or immediate risk to workplace health and safety at the workplace happens—to report the incident or risk to the employer or principal contractor;
- (h) another function prescribed under a regulation.

### **96A        Assessment function**

- (1) A workplace health and safety officer has the function, at the specified intervals for the workplace, of—
  - (a) conducting an assessment at the workplace to identify any hazards and unsafe or unsatisfactory workplace health and safety conditions and practices; and
  - (b) complying with subsections (2) to (4) in relation to the assessment.

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- (2) In conducting the assessment, the workplace health and safety officer must use—
  - (a) if there is a workplace health and safety committee established at the workplace—
    - (i) workplace health and safety criteria approved by the chief executive; or
    - (ii) workplace health and safety criteria agreed to by the committee; or
  - (b) otherwise—workplace health and safety criteria approved by the chief executive.
- (3) The workplace health and safety officer must record—
  - (a) the results of the assessment; and
  - (b) actions the officer recommends be taken to rectify hazards, and unsafe or unsatisfactory workplace health and safety conditions and practices, identified in the assessment.
- (4) The workplace health and safety officer must, within 30 days after the assessment is completed, give a copy of the matters recorded under subsection (3) to each of the following—
  - (a) if there is a workplace health and safety committee established at the workplace—the committee;
  - (b) the employer or principal contractor.
- (5) This section does not apply to a workplace if this Act does not require the appointment of a workplace health and safety officer for the workplace.
- (6) This section does not limit section 96.
- (7) In this section—

*specified intervals*, for a workplace, means—

  - (a) if there is a workplace health and safety committee established at the workplace—the intervals agreed between the officer and the committee; or
  - (b) if there is no workplace health and safety committee established at the workplace, or if there is a committee established, but the officer and the committee can not agree—at least once every 12 months.

## **Division 6                      Employer's and principal contractor's responsibilities**

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

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, work 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; and
- (f) must allow the workplace health and safety officer to conduct workplace inspections and assessments during normal working hours; and
- (g) must provide resources to the workplace health and safety officer to allow the officer to properly exercise the officer's functions under this Act; and
- (h) must take appropriate action to rectify any identified unsafe workplace health and safety conditions and practices; and

- (i) must take all reasonable steps to ensure the workplace health and safety officer performs the officer's function under section 96A; and
- (j) must keep anything given to the employer or principal contractor by the workplace health and safety officer under section 96A(4) for 5 years after it is given.

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

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

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**

#### **99                      Appointment**

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.

**100 Limitation of inspector's powers**

- (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.

**101 Inspector's appointment conditions**

- (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.

**102 Inspector's identity card**

- (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.

### **103 Production or display of inspector's identity card**

- (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**

### **103A Inspectors may give advice to persons with workplace health and safety obligation**

An inspector may give advice to a person who has a workplace health and safety obligation in relation to the person's compliance with this Act.

### **104 Entry to places**

- (1) An inspector may enter a place only if—
- (a) it is a workplace; or
  - (b) the inspector reasonably suspects it is a workplace; or
  - (c) for a workplace or suspected workplace on or near domestic premises—the entry is to land around the

- premises to gain access to the workplace or suspected workplace; or
- (d) its occupier consents to the entry; or
  - (e) specified high risk plant is situated at the place; or
  - (f) 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.
- (4) Subsection (1) does not authorise an inspector to enter, without consent or a warrant, any part of domestic premises if the part is not also a workplace or suspected workplace.
- (5) If an inspector enters a place under subsection (1)(b) and it is not a workplace, the inspector must leave the place immediately.

## **105 Consent to entry**

- (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.<sup>12</sup>
- (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.

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<sup>12</sup> This section does not apply if entry is authorised by section 104(1)(a), (b) or (d) or (2).

- (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.

## **106 Warrants to enter**

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

### **107 Warrants—applications made other than in person**

- (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.

## **108 General powers after entering places**

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

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- (1A) However, this section does not apply to an inspector who enters a place under section 104(1)(b) if the place is not a workplace.
- (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) make inquiries or 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.

*Examples of excuses that are not reasonable excuses as they are matters of mere convenience—*

- 1 An inspector visits an employer's workplace to inspect plant involved in a workplace accident. The employer explains to the inspector that the plant is now at the employer's other workplace. The employer claims to be too busy to unlock the other workplace

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for another week. This is a matter of mere convenience not a reasonable excuse.

- 2 An inspector visits an employer's workplace to inspect plant. The employer claims that the plant can not be operated because the worker who normally operates the plant is not working then. However, another worker at the workplace is competent to operate the plant. The employer refuses to allow the other worker to operate the plant. This is a matter of mere convenience not 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, if the person is an individual, to fail to comply with the requirement, if complying with the requirement might tend to incriminate the person.

**109 Power to seize evidence etc.**

- (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) for an entry made with the occupier's consent—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.

### **110 Inspector's power to seize dangerous places and things**

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.

### **111 Powers supporting seizure**

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

## **112 Receipt for seized things**

- (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).

## **113 Forfeiture of seized things**

- (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.

## **114 Return of seized things**

- (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.

### **115 Access to seized things**

- (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.

## **Division 3 Improvement and prohibition notices**

### **117 Improvement notice**

- (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 direct the person to remedy—
  - (a) the contravention or likely contravention; or
  - (b) the things or operations causing the contravention or likely contravention.
- (2A) The direction may be given orally, but must be confirmed by written notice (an *improvement notice*) given to the person as soon as practicable.
- (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, or has been, 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—
- (a) the direction; and
  - (b) the improvement notice.

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

## **118 Prohibition notice**

- (1) This section applies if an inspector reasonably believes that circumstances causing, or likely to cause, a risk of serious bodily injury, work caused illness or a dangerous event have arisen, or are likely to arise, in relation to a workplace, relevant workplace area, work activity, plant or substance.
- (2) The inspector may direct the person in control of the workplace, relevant workplace area, work activity, plant or substance that caused or is likely to cause, the circumstances to stop using, or allowing to be used, the workplace, area, plant or substance or to stop the activity.
- (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—
  - (a) the direction; and
  - (b) the 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, the 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.
- (7) For this section, a person is *in control* of a workplace, relevant workplace area, work activity, plant or substance if the person has, or reasonably appears to have, authority to exercise control over the workplace, area, activity, plant or substance.

## **119 Order to secure compliance with notices**

- (1) This section applies if it appears to the chief executive—
  - (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**

### **120    Power to require name and address**

- (1) This section applies if—
  - (a) an inspector finds a person committing an offence against this Act; or
  - (b) an inspector finds a person in circumstances that lead, or has information that leads, the inspector to reasonably suspect the person has committed an offence against this Act.
- (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.

### **121    Power to inquire into workplace incident**

- (1) This section applies if an inspector becomes aware, or reasonably suspects, that a workplace incident has happened.
- (2) The inspector may inquire into the circumstances and probable causes of the incident.

- (3) The inspector may require a person who has knowledge, or whom the inspector reasonably suspects to have knowledge, of the circumstances of the incident to give the inspector reasonable help, as stated in the requirement, to inquire under subsection (2).
- (4) A requirement under subsection (3) may be given orally or in writing.
- (5) A person must comply with a requirement under subsection (3) unless the person has a reasonable excuse for not complying.

Maximum penalty—10 penalty units.

- (6) 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, if the person is an individual, to fail to comply with the requirement if complying with the requirement might tend to incriminate the person.

## **122 Power to require production of certain documents**

- (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), unless the employer, person, contractor or owner has a reasonable excuse for not complying.

Maximum penalty—10 penalty units.

- (3) If the person is an individual, 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**

### **123    Destruction of workplace, relevant workplace area, plant or substance that is a serious risk to health or safety**

- (1) This section applies if an inspector reasonably believes that a workplace or part of a workplace, relevant workplace area, 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, relevant workplace area, plant or substance or make it harmless.

*Example—*

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

- (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.



**124 Analysis of samples**

- (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.

**125 Compensation**

- (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.<sup>13</sup>
- (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.

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<sup>13</sup> Section 123 (Destruction of workplace, relevant workplace area, plant or substance that is a serious risk to health or safety) deals with destruction of a workplace, relevant workplace area, plant or substance that is a serious risk to workplace health or safety.

- (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.

## **126 Forfeiture on conviction**

- (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
  - (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.

## **127 Dealing with forfeited things**

- (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.

**128 Inspector to give notice of damage**

- (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****129 Minister may establish or re-establish boards of inquiry**

- (1) The Minister may establish or re-establish a board of inquiry about any workplace incident<sup>14</sup> by gazette notice.

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14 *Workplace incident* is a defined term. See the dictionary for its meaning.

- (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.

### **130 Role of board of inquiry**

- (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.
- (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.

### **131 Conditions of appointment**

- (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.

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

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.

### **133 Inspector may exercise powers for board's inquiry**

- (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 9<sup>15</sup> for the workplace incident the subject of the board's inquiry.

## **Division 2 Conduct of inquiry**

### **134 Procedure**

- (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.

**135 Notice of inquiry**

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.

**136 Inquiry to be held in public except in special circumstances**

- (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.

**137 Protection of members, legal representatives and witnesses**

- (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.

**138 Record of proceedings to be kept**

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

**139 Procedural fairness and representation**

- (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.

**140 Board's powers on inquiry**

- (1) In conducting the inquiry, the board may—
  - (a) act in the absence of any person who has been given a notice under section 135<sup>16</sup> or some other reasonable notice; and
  - (b) receive evidence on oath or affirmation or by statutory declaration; and
  - (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.

**141 Notice to witness**

- (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.

**142 Inspection of documents or things**

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

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16 Section 135 (Notice of inquiry)

- (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.

### **143 Inquiry may continue despite court proceedings unless otherwise ordered**

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.

### **144 Offences by witnesses**

- (1) A person given a notice under section 141<sup>17</sup> 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

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17 Section 141 (Notice to witness)



- (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) If the person is an individual, 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.

#### **145 Contempt of board**

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.

#### **146 Report of offences**

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 Crime and Misconduct Commission;
- (c) the director of public prosecutions;
- (d) the chief executive.

#### **147 Change of membership of board**

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

## **Part 11                      Appeals**

### **Division 1A                Interpretation**

#### **147A    Definitions for pt 11**

In this part—

*decision*, of the chief executive, does not include a decision of the chief executive under part 5.<sup>18</sup>

*original decision* means a decision of the chief executive or an inspector.

### **Division 1                Internal review of decisions**

#### **148    Application for review**

A person whose interests are affected by an original decision may apply under this division for the decision to be reviewed.

#### **149    Procedure for review**

- (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.

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18 Part 5 (Enforceable undertakings)

- (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.

## **150 Review of decision**

- (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.

### **151 Stay of operation of original decisions**

- (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**

### **152 Who may appeal?**

- (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.

**153 How to start appeal**

- (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.

**154 Stay of operation of decisions**

- (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.

**155 Hearing procedures**

- (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.

### **156 Assessors**

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.

### **157 Powers of court on appeal**

- (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**

#### **158 Application of division**

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

**159 Proof of appointments and authority unnecessary**

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.

**160 Proof of signatures unnecessary**

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

**161 Evidentiary aids**

- (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.

## **162 Expert reports**

- (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.

### **163 Analyst's certificate or report**

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**

### **164 Proceedings for offences**

- (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 dissatisfied with 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 1999* 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.
- (6) In this section—

*person dissatisfied with a decision* in a proceeding means—

  - (a) a party to the proceeding; or
  - (b) a person bound by the decision; or
  - (c) if an inspector started the proceeding—any inspector.

## **165 Limitation on time for starting proceedings**

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.

## **166 Responsibility for acts or omissions of representatives**

- (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.

### **167 Executive officers must ensure corporation complies with Act**

- (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.

### **168 Representation at hearing**

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

### **168A Costs of investigation**

- (1) If a court convicts a person of an offence against this Act, the court may order the person to pay the department's reasonable costs of investigating the offence, including reasonable costs of preparing for the prosecution of the offence.
- (2) This section does not limit the orders for costs the court may make.

### **169 Recovery of fees**

- (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**

### **171      False or misleading statements**

- (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.

### **172      False, misleading or incomplete documents**

- (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.

### **173 Obstructing inspectors**

- (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; and
- (c) if the person continues to obstruct the inspector, the inspector may ask a police officer to help the inspector exercise the power.

### **174 Discrimination or victimisation**

- (1) An employer must not dismiss a worker, or otherwise act to the detriment of a worker in the worker's employment, for the dominant or substantial reason that the worker—

- (a) is, or has performed a function as, a workplace health and safety representative, a workplace health and safety officer or a member of a workplace health and safety committee; or

- (b) has made a complaint about an issue, or in any other way has raised an issue, concerning workers' exposure to the risk of illness or injury; or
- (c) has contacted or given help to an inspector.

Maximum penalty—40 penalty units.

*Examples of acting to the detriment of a worker—*

- 1 Demotion of the worker.
  - 2 Unwarranted transfer of the worker.
  - 3 Reducing the worker's terms and conditions of employment.
- (2) If an employer contravenes subsection (1) by dismissing a worker, the worker is taken to have been unfairly dismissed under the *Industrial Relations Act 1999*, chapter 3, part 2,<sup>19</sup> and subject to that part, has the remedies under that part.

## **175 Employers and principal contractor not to encourage refusal to answer questions**

- (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.

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<sup>19</sup> *Industrial Relations Act 1999*, chapter 3 (Dismissals), part 2 (Unfair dismissals)

**176 Impersonating inspectors and others**

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

Maximum penalty—40 penalty units.

**Part 14 General****Division 1 Accredited providers****177 Appointment**

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

**178 Functions of accredited providers**

- (1) An accredited provider is subject to the chief executive's directions in performing the accredited provider's functions.
- (2) The functions of an accredited provider 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.

### **179 Accredited provider's appointment conditions**

- (1) An accredited provider holds office on the conditions stated in the instrument of appointment.
- (2) An accredited provider—
  - (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.

### **180 Accredited provider's identity card**

- (1) The chief executive must give each accredited provider an identity card.
- (2) The identity card must—
  - (a) contain a recent photo of the accredited provider; and
  - (b) be signed by the accredited provider; and
  - (c) identify the person as an accredited provider for this Act; and
  - (d) state an expiry date.
- (3) A person who stops being an accredited provider 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 provider, unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

**181 Production or display of accredited provider's identity card**

An accredited provider 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.

**182 Suspension or revocation of accredited provider's appointment**

The chief executive may suspend or revoke an accredited provider's appointment.<sup>20</sup>

**Division 1A Report about occupational health and safety performance****182A Application for report**

- (1) The Workers' Compensation Regulatory Authority must apply to the chief executive for a report about the occupational health and safety performance of an employer or a group employer for the purpose of an application or renewal for self-insurance under the *Workers' Compensation and Rehabilitation Act 2003*.
- (2) The employer or group employer must pay the fee calculated under a regulation for the preparation of the report.
- (3) The chief executive must—
  - (a) prepare the report having regard to the occupational health and safety performance standards published by the chief executive; and
  - (b) give the report to the Authority within 3 months after receiving the application for the report.

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<sup>20</sup> An accredited provider may appeal under section 152 (Who may appeal?) against a decision to suspend or revoke the officer's appointment.

(4) In this section—

*employer* see the *Workers' Compensation and Rehabilitation Act 2003*, section 30.

*group employer* see the *Workers' Compensation and Rehabilitation Act 2003*, schedule 6.

## **Division 2                      Miscellaneous**

### **183      Protection from liability—officials**

(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 board or industry sector standing 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.

### **184      Protection from liability—others**

- (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 part 7.<sup>21</sup>
- (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.<sup>22</sup>

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21 Part 7 (Workplace consultative arrangements)

22 Part 8 (Workplace health and safety officers)

**184A Appointment of principal contractors**

- (1) If the owner of a construction workplace appoints a person as a principal contractor for the workplace, the owner must—
  - (a) appoint the person by using the approved form; and
  - (b) as soon as practicable after the appointment is made, give a copy of the appointment to the chief executive.

Maximum penalty—10 penalty units.

- (2) The owner of a construction workplace must ensure there is only 1 principal contractor appointed for the workplace at any particular time, unless the owner has the written approval of the chief executive to appoint more than 1 principal contractor for the workplace.

Maximum penalty—10 penalty units.

- (3) If the owner of a construction workplace, without the chief executive's written approval under subsection (2), has in place, or purports to have in place, 2 or more principal contractors for the construction workplace at the one time—
  - (a) all principal contractor appointments for the workplace cease to have effect; and
  - (b) the owner is, under this Act, the principal contractor for the workplace until another principal contractor appointment is made.
- (4) The ceasing to have effect of principal contractor appointments because of subsection (3) does not affect an owner's liability for an offence under subsection (2).

**185 Powers of chief executive**

- (1) The chief executive may require—
  - (a) a designer, manufacturer or supplier of plant to prevent the use of unsafe plant at a workplace or elsewhere; or
  - (b) a manufacturer 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 or supplier of the plant;  
or
    - (ii) the manufacturer 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
    - (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.

## **186 Exemption of person or thing from Act**

- (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**

### **187 Delegations**

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 17 Transitional provisions**

### **Division 1 Transitional provisions for Act No. 25 of 1995**

#### **189 Workplace Health and Safety Act 1989 references**

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.

### **Division 2 Transitional provisions for Workers' Compensation and Rehabilitation and Other Acts Amendment Act 2004**

#### **190 Existing advisory standards**

- (1) The *Workplace Health and Safety (Advisory Standards) Notice 1998* (the *notice*) is repealed.
- (2) The advisory standards mentioned in the notice, and as in force immediately before the commencement of this section—
  - (a) are continued in force as codes of practice; and
  - (b) expire 10 years after their commencement.

- (3) To remove any doubt, it is declared that subsection (2)(b) does not prevent a statutory instrument, mentioned in the subsection and being continued in force, from being amended or repealed before its expiry under this Act.

## **191 Existing codes of practice**

- (1) The industry codes of practice mentioned in the *Workplace Health and Safety (Industry Codes of Practice) Notice 1999*, and as in force immediately before the commencement of this section—
- (a) are continued in force as codes of practice; and
  - (b) expire 10 years after their commencement.
- (2) To remove any doubt, it is declared that subsection (1)(b) does not prevent a statutory instrument, mentioned in the subsection and being continued in force, from being amended or repealed before its expiry under this Act.

## Schedule 2 Specified high risk plant

sch 3, definition *specified high risk plant*

### 1 Meaning of *specified high risk plant*

The following items of plant are specified high risk plant—

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

### 2 Definitions for schedule

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.

*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.



**Schedule 2 (continued)**

***escalator*** means a power driven inclined continuous stairway used for raising or lowering passengers, and includes a moving walkway.

***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.

***LP gas cylinder*** means a cylinder with a water capacity of more than 0.1 kg that contains liquefied petroleum gas under pressure.

## Schedule 3      Dictionary

### section 8

***airconditioning unit*** see schedule 2.

***alleged contravention***, for a workplace health and safety undertaking, see section 42D.

***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.

***board*** see section 44.

***bodily harm*** see Criminal Code, section 1.<sup>23</sup>

***building work*** means work to erect, construct, extend or structurally alter a building or part of a building, but does not include the construction of a manufactured home or 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.

***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

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23 Criminal Code, section 1—

***bodily harm*** means any bodily injury which interferes with health or comfort.

## Schedule 3 (continued)

- (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
- (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.

**construction work** see section 13A.

**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.

**co-workers**, for part 7, see section 66.

**dangerous event** means an event caused by specified high risk plant, or an event at a workplace caused by a work activity, if the event involves or could have involved exposure of persons to risk to their health and safety because of—

- (a) collapse, overturning, failure or malfunction of, or damage to, an item of specified high risk plant; or
- (b) collapse or failure of an excavation or of any shoring supporting an excavation; or
- (c) collapse or partial collapse of any part of a building or other structure; or

## Schedule 3 (continued)

- (d) damage to any load bearing member of, or the failure of any brake, steering device or other control device of, a crane, hoist, conveyor, lift or escalator; or
- (e) implosion, explosion or fire; or
- (f) escape, spillage or leakage of any hazardous material or dangerous goods; or
- (g) fall or release from a height of any plant, substance or object; or
- (h) damage to a boiler, pressure vessel or refrigeration plant; or
- (i) uncontrolled explosion, fire or escape of gas or steam.

**dangerous goods** see *Dangerous Goods Safety Management Act 2001*, section 9.<sup>24</sup>

**deal with** includes sell, dispose of and destroy.

**decision**, for part 11, see section 147A.

**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.

**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.

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<sup>24</sup> *Dangerous Goods Safety Management Act 2001*, section 9—

**9 Meaning of dangerous goods**

Goods are **dangerous goods** if they are defined under the ADG Code as—

- (a) dangerous goods; or
- (b) goods too dangerous to be transported.

## Schedule 3 (continued)

*fee* includes tax.

*grievous bodily harm* see Criminal Code, section 1.<sup>25</sup>

*hazardous material* see *Dangerous Goods Safety Management Act 2001*, section 12.<sup>26</sup>

*identified person*, for a workplace health and safety undertaking, see section 42D.

*illness* includes a disease.

*improvement notice* see section 117.

*included in*, in relation to fixtures, fittings or plant, includes contained in, attached to or forming part of.

*inspector* means a person who is appointed under this Act as an inspector.

*lift* see schedule 2.

*LP gas cylinder* see schedule 2.

*manufactured home* see the *Manufactured Homes (Residential Parks) Act 2003*, section 10.

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25 Criminal Code, section 1—

*grievous bodily harm* means—

- (a) the loss of a distinct part or an organ of the body; or
- (b) serious disfigurement; or
- (c) any bodily injury of such a nature that, if left untreated, would endanger or be likely to endanger life, or cause or be likely to cause permanent injury to health;

whether or not treatment is or could have been available.

26 *Dangerous Goods Safety Management Act 2001*, section 12—

**12 Meaning of *hazardous material***

- (1) A *hazardous material* is a substance with potential to cause harm to persons, property or the environment because of 1 or more of the following—
  - (a) the chemical properties of the substance;
  - (b) the physical properties of the substance;
  - (c) the biological properties of the substance.
- (2) Without limiting subsection (1), all dangerous goods, combustible liquids and chemicals are hazardous materials.

## Schedule 3 (continued)

**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.

**original decision**, for part 11, see section 147A.

**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 illness.

**person in control**—

- (a) of a relevant workplace area—see section 15B; or
- (b) of fixtures, fittings or plant included in a relevant workplace area—see section 15C.

**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, under 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.

**prohibition notice** see section 118.

## Schedule 3 (continued)

**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.

**reasonable excuse** does not include a matter of mere convenience.

**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 information**, for a substance, means information that clearly identifies the substance, and that states the following—

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

**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.

**relevant workplace area** see section 15A.

**review decision**, for part 11, see section 150.

**risk** means risk of death, injury or illness.

**self-employed person** see section 12.

**serious bodily injury** means an injury to a person that causes—

- (a) the injured person's death; or
- (b) the loss of a distinct part or an organ of the injured person's body; or

## Schedule 3 (continued)

- (c) the injured person to be absent from the person's voluntary or paid employment for more than 4 days.

**specified high risk plant** see schedule 2.

**substance** means any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour.

**union**, for part 7, see section 66.

**used properly**, for plant or a substance, see section 15.

**vehicle** includes ship, boat and aircraft.

**waters** include Queensland waters.

**work caused illness** means—

- (a) an illness contracted by a person to which work, a workplace, a work activity or specified high risk plant was a significant contributing factor; or
- (b) the recurrence, aggravation, acceleration, exacerbation or deterioration in a person of an existing illness if work, a workplace, a work activity or specified high risk plant was a significant contributing factor to the recurrence, aggravation, acceleration, exacerbation or deterioration.

**worker** see section 11.

**work injury** means—

- (a) an injury to a person that requires first aid or medical treatment if the injury was caused by work, a workplace, a work activity or specified high risk plant; or
- (b) the recurrence, aggravation, acceleration, exacerbation or deterioration of an existing injury in a person if—
- (i) first aid or medical treatment is required for the injury; and
- (ii) work, a workplace, a work activity or specified high risk plant caused the recurrence, aggravation, acceleration, exacerbation or deterioration; or
- (c) any serious bodily injury, if the injury was caused by work, a workplace, a work activity or specified high risk plant.



## Schedule 3 (continued)

*workplace* see section 9.

*workplace health and safety* see section 22(1).

*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
- (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 health and safety undertaking* see section 42D.

*workplace incident* means—

- (a) an incident resulting in a person suffering—
  - (i) a work injury; or
  - (ii) a work caused injury; or
- (b) an incident resulting in a dangerous event; or
- (c) 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

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 November 2004. 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

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No.[X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
o in c	= order in council	s	= section
om	= omitted	sch	= schedule
orig	= original	sdiv	= subdivision
p	= page	SIA	= Statutory Instruments Act 1992
para	= paragraph	SIR	= Statutory Instruments Regulation 2002
prec	= preceding	SL	= subordinate legislation
pres	= present	sub	= substituted
prev	= previous	unnum	= unnumbered

## **4 Table of reprints**

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

## **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)

amending legislation—

### **Statute Law Revision Act 1995 No. 57 ss 1–2, 4 sch 1**

date of assent 28 November 1995

s 4 sch 1 amdt 5 commenced 1 July 1995 (see s 2(1))

remaining provisions commenced on date of assent

### **Workplace Relations Act 1997 No. 1 ss 1–2, 495 sch 4**

date of assent 14 February 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 27 March 1997 (1997 SL No. 77)

### **Workplace Health and Safety Amendment Act 1997 No. 58**

date of assent 16 October 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 1 February 1998 (1997 SL No. 408)

### **Explosives Act 1999 No. 15 ss 1–2, 137 sch 1**

date of assent 22 April 1999

ss 1–2 commenced on date of assent

remaining provisions commenced 11 June 1999 (1999 SL No. 108)

### **WorkCover Queensland Amendment Act 1999 No. 17 ss 1–2(1), 52**

date of assent 22 April 1999

ss 1–2 commenced on date of assent

remaining provisions commenced 3 March 1999 (see s 2(1))

### **Radiation Safety Act 1999 No. 20 ss 1–2, 236**

date of assent 30 April 1999

ss 1–2 commenced on date of assent

remaining provision commenced 1 January 2000 (1999 SL No. 329)

### **Industrial Relations Act 1999 No. 33 ss 1, 2(2), 747 sch 3**

date of assent 18 June 1999

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1999 (1999 SL No. 159)

### **Coal Mining Safety and Health Act 1999 No. 39 ss 1–2, 299 sch 1**

date of assent 2 September 1999

ss 1–2 commenced on date of assent

remaining provisions commenced 16 March 2001 (2001 SL No. 14) (proposed commencement 2 September 2001 (automatic commencement under AIA s 15DA(2) (2000 SL No. 226 s 2)))

**Mining and Quarrying Safety and Health Act 1999 No. 40 ss 1–2, 274 sch 1**

date of assent 2 September 1999

ss 1–2 commenced on date of assent

remaining provisions commenced 16 March 2001 (2001 SL No. 16) (proposed commencement 2 September 2001 (automatic commencement under AIA s 15DA(2) (2000 SL No. 226 s 2)))

**Road Transport Reform Act 1999 No. 42 ss 1–2(1), 54(3) sch pt 3**

date of assent 2 September 1999

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 1999 (see s 2(1))

**Police Powers and Responsibilities Act 2000 No. 5 ss 1–2, 461 (prev s 373) sch 3**

date of assent 23 March 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2000 (see s 2(1), (3) and 2000 SL No. 174)

**GST and Related Matters Act 2000 No. 20 ss 1, 2(4), 29 sch 3**

date of assent 23 June 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2000 (see s 2(4))

**Training and Employment Act 2000 No. 23 ss 1, 2(3), 293 sch 2**

date of assent 27 June 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 28 September 2000 (2000 SL No. 248)

**Workplace Health and Safety Amendment Act 2000 No. 33**

date of assent 4 September 2000

commenced on date of assent

**Statute Law (Miscellaneous Provisions) Act 2000 No. 46 ss 1, 3 sch**

date of assent 25 October 2000

commenced on date of assent

**Crime and Misconduct Act 2001 No. 69 ss 1–2, 378 sch 1**

date of assent 8 November 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 2002 (2001 SL No. 221)

**Electrical Safety Act 2002 No. 42 ss 1–2, 242 sch 1**

date of assent 12 September 2002

ss 1–2 commenced on date of assent

remaining provisions commenced 1 October 2002 (2002 SL No. 259)

**Workplace Health and Safety and Other Acts Amendment Act 2003 No. 18 ss 1, 2(2), pt 2**

date of assent 9 May 2003

ss 1–2 commenced on date of assent

remaining provisions commenced 1 June 2003 (2003 SL No. 101)

**Statute Law (Miscellaneous Provisions) Act 2003 No. 19 ss 1, 3 sch**

date of assent 9 May 2003  
 commenced on date of assent

**Workers' Compensation and Rehabilitation Act 2003 No. 27 ss 1–2(2), 622 sch 5**

date of assent 23 May 2003  
 ss 1–2 commenced on date of assent  
 remaining provisions commenced 1 July 2003 (see s 2(2))

**Training Reform Act 2003 No. 63 ss 1, 2(2), 60 sch**

date of assent 13 October 2003  
 ss 1–2 commenced on date of assent  
 remaining provisions commenced 1 January 2004 (2003 SL No. 293)

**Manufactured Homes (Residential Parks) Act 2003 No. 74 ss 1–2, 155 sch 1**

date of assent 22 October 2003  
 ss 1–2 commenced on date of assent  
 remaining provisions commenced 1 March 2004 (2003 SL No. 336)

**Petroleum and Gas (Production and Safety) Act 2004 No. 25 ss 1, 2(2), ch 16 pt 28  
 (this Act is amended, see amending legislation below)**

date of assent 12 October 2004  
 ss 1–2 commenced on date of assent  
 remaining provisions commence 31 December 2004 (2004 SL No. 308)  
 amending legislation—

**Petroleum and Other Legislation Amendment Act 2004 No. 26 ss 1–2(1),  
 266 (amends 2004 No. 25 above)**

date of assent 12 October 2004  
 ss 1–2 commenced on date of assent  
 remaining provision commenced 13 October 2004 (see s 2(1))

**Workers' Compensation and Rehabilitation and Other Acts Amendment Act 2004  
 No. 45 ss 1–2(1)–(2), pt 3, s 90 sch**

date of assent 18 November 2004  
 ss 1–2 commenced on date of assent  
 s 100 commences 1 February 2005 (see s 2(2))  
 s 102 commences 1 January 2005 (see s 2(1))  
 remaining provisions commenced on date of assent

## 6 List of annotations

**Title** sub 1997 No. 58 s 4

**PART 1—PRELIMINARY****Commencement**

**s 2** om R2 (see RA s 37)

**Application of Act**

**s 3** amd 1999 No. 15 s 137 sch 1; 1999 No. 20 s 236; 1999 No. 39 s 299 sch 1;  
 1999 No. 40 s 274 sch 1; 1999 No. 42 s 54(3) sch pt 3

**Relationship with Electrical Safety Act 2002**

**s 3A** ins 2002 No. 42 s 242 sch 1  
amd 2004 No. 45 s 91

**What does this Act apply to?**

**s 5** amd 2004 No. 45 s 90 sch

**Who does this Act apply to?**

**s 6** amd 2004 No. 45 s 90 sch

**Division 3—Objective of Act**

**div hdg** sub 1997 No. 58 s 5

**Objective of Act**

**s 7** sub 1997 No. 58 s 5;  
amd 2004 No. 45 s 90 sch

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**s 10** amd 1995 No. 57 s 4 sch 1; 1997 No. 58 s 7; 2000 No. 23 s 293 sch 2; 2003 No. 18 s 4; 2003 No. 63 s 60 sch; 2004 No. 45 s 93

**Who is a “worker”?**

**prov hdg** amd 2003 No. 18 s 5(1)  
**s 11** amd 1997 No. 58 s 8; 2003 No. 18 s 5(2)–(3)

**Who is a “self-employed person”?**

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**s 13** amd 1997 No. 58 s 9

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s 22            amd 1997 No. 58 s 15(2)–(4); 2004 No. 45 s 90 sch

**Obligations for workplace health and safety**

s 23            amd 2003 No. 18 s 10

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prov hdg      amd 1997 No. 58 s 19(1)

s 27            amd 1997 No. 58 s 19(2)–(3); 2004 No. 45 s 90 sch

**Obligations of employers**

s 28            sub 2003 No. 18 s 13

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**What obligations under ss 28–29A may include**

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**Obligations of persons in control of workplaces**

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**Obligations of erectors and installers of plant**

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**Obligations of manufacturers of substances for use at workplace**

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**Obligations of suppliers of substances for use at workplace**

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**Obligation of designer of building or other structure used as a workplace**

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s 58 amd 1997 No. 58 s 48(2)–(3)

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**prov hdg** amd 1997 No. 58 s 49(1)  
**s 59** amd 1997 No. 58 s 49(1)–(2)

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**s 60** amd 1997 No. 58 s 50

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**Employer to display identity of workplace health and safety representatives**

**s 79** amd 2003 No. 18 s 19A

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**s 188** prev s 188 om 1997 No. 58 s 68

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**s 189** prev s 189 exp 1 July 1996 (see s 189(3))

AIA s 20 applies (see s 189(2))

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renum 1997 No. 58 s 72

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**div hdg** ins 1997 No. 58 s 73

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**div hdg** ins 2003 No. 18 s 34(2)

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

s 193 exp 1 July 1996 (see s 193(4))  
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s 195 exp 1 July 1996 (see s 195(3))  
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- def “**alleged contravention**” ins 2003 No. 18 s 36(2)  
def “**board**” ins 1997 No. 58 s 75(2)  
def “**bodily harm**” ins 1997 No. 58 s 75(2)  
def “**building work**” amd 2000 No. 20 s 29 sch 3; 2003 No. 18 s 36(3); 2003 No. 74 s 155 sch 1  
def “**civil construction work**” amd 2000 No. 20 s 29 sch 3; 2003 No. 18 s 36(4)  
def “**compliance standard**” om 1997 No. 58 s 75(1)  
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def “**work caused illness**” amd 1997 No. 58 s 75(4)–(5); 2003 No. 18 s 36(6)–(7); 2004 No. 45 s 90 sch  
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def “**workplace incident**” amd 2003 No. 18 s 36(8)–(9)  
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## **7 List of forms notified or published in the gazette**

**Form 2A—Application for Registration of a Registrable Workplace**

pubd gaz 30 August 2002 p 1551

**Form 3 Version 2—July 2003—Incident Notification**

pubd gaz 4 July 2003 p 834

**Form 4 Version 3—August 2003—Hazard Report Form**

pubd gaz 15 August 2003 p 1296

**Form 5 Version 8—June 2003—Workplace Health and Safety Officer Assessment Report Certificate of Authority Application**

pubd gaz 4 July 2003 p 834

**Form 6 Version 16—June 2003—Prescribed Occupation Application/Assessment Report**

pubd gaz 27 June 2003 p 720

**Form 7 Version 1—Notice of Change to a Registered Workplace**

pubd gaz 19 December 1997 pp 1760–1

**Form 8 Version 1—Application for Registration of a Registrable Plant or Notification Change of Ownership of Registrable Plant**

pubd gaz 19 December 1997 pp 1760–1

**Form 8—Version 5.4–01—Application for Registration of Registrable Plant**

pubd gaz 3 August 2001 p 1293

**Form 9 Version 11—June 2003—Application for Replacement Certificate**

pubd gaz 4 July 2003 p 834

**Form 10 Version 7—October 2003—Application To Be An Accredited Provider**

pub gaz 24 October 2003 p 599

**Form 11 Version 3—October 2003—Who Is Your Workplace Health and Safety Representative**

pubd gaz 17 October 2003 p 527

**Form 12 Version 6—June 2003—Prohibition Notice**

pubd gaz 4 July 2003 p 834

**Form 13 Version 4—August 2003—Improvement Notice**

pubd gaz 15 August 2003 p 1296

**Form 14 Version 8—Application for registration of registrable plant design**

pubd gaz 29 October 2004 p 730

**Form 15 Version 1—Receipt for Seizure**

pubd gaz 19 December 1997 pp 1760–1

- Form 16 Version 1—Notice of Requirement**  
pubd gaz 19 December 1997 pp 1760–1
- Form 17 Version 2—June 2003—Application for Review of Decision**  
pubd gaz 4 July 2003 p 834
- Form 18 Version 1—Certificate of Registration of Plant**  
pubd gaz 19 December 1997 pp 1760–1
- Form 19 Version 1—Certificate of Registration of a Workplace**  
pubd gaz 19 December 1997 p 1760–1
- Form 20 Version 5—November 2003—Application for Renewal of Registration of a Workplace**  
pubd gaz 6 November 2003 p 755
- Form 22 Version 1—Certificate of Authority**  
pubd gaz 19 December 1997 pp 1760–1
- Form 22.R Version 2—Self-insurance Declaration of Wages Form**  
pubd gaz 2 July 2004 p 699
- Form 23 Version 1—Notification of Lead-Risk Job**  
pubd gaz 19 December 1997 pp 1760–1
- Form 24 Version 4—December 2003—Infringement Notice**  
pubd gaz 19 December 2003 p 1297
- Form 25 Version 5—November 2003—Application for Renewal of Registration of Registrable Plant**  
pubd gaz 6 November 2003 p 755
- Form 26 Version 1—October 1999—Medical Declaration for Resort Driving**  
pubd gaz 15 October 1999 pp 627–8
- Form 30 Version 1—1 January 2001—Application/Assessment Report form for Business Certificate to Perform Asbestos Removal/Demolition Work**  
pubd gaz 16 February 2001 p 682
- Form 32 Version 1—1 January 2001—Business Certificate to Perform Asbestos Removal/Demolition**  
pubd gaz 16 February 2001 p 682
- Form 34 Version 1—May 2003—Notice of Appointment of Principal Contractor Approved**  
pubd gaz 30 May 2003 p 362
- Form 132.WC Version 2—Application for Compensation (WorkCover Queensland)**  
pubd gaz 2 July 2004 p 699
- Form 133.WC Version 2—Employer’s Report (WorkCover Queensland)**  
pubd gaz 2 July 2004 p 699
- Form 185.3 Version 2—Notice of Assessment (Work related impairment of <50%; physical or psychiatric / psychological injury; additional lump sum for gratuitous care)**  
pubd gaz 2 July 2004 p 699

**Form 185.5 Version 2—Notice of Assessment (Work related impairment of <50%; physical and psychiatric / psychological injury; additional lump sum for gratuitous care)**

pubd gaz 2 July 2004 p 699

**Form 185.7 Version 2—Notice of Assessment (Work related impairment of 50% or more; physical or psychiatric / psychological injury; additional lump sum compensation for gratuitous care)**

pubd gaz 2 July 2004 p 699

**Form 185.9 Version 2—Notice of Assessment (Work related impairment of 50% or more; physical and psychiatric / psychological injury; additional lump sum compensation for gratuitous care)**

pubd gaz 2 July 2004 p 699