



Queensland

Petroleum (Submerged Lands) Amendment Act 2004

Act No. 34 of 2004



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Queensland

Petroleum (Submerged Lands) Amendment Act 2004

Act No. 34 of 2004

An Act to amend the *Petroleum (Submerged Lands) Act 1982*

[Assented to 27 October 2004]

The Parliament of Queensland enacts—**1 Short title**

This Act may be cited as the *Petroleum (Submerged Lands) Amendment Act 2004*.

2 Commencement

This Act commences on 1 January 2005.

3 Act amended

This Act amends the *Petroleum (Submerged Lands) Act 1982*.

4 Amendment of s 4 (Definitions)

(1) Section 4(1), definition *the Commonwealth Act*—
omit.

(2) Section 4(1)—
insert—

‘*Board*, for part 3A, see section 151A.

CEO, for part 3A, see section 151A.

Commonwealth Act—

(a) for part 1, division 2, see section 9; and

(b) otherwise, means the *Petroleum (Submerged Lands) Act 1967* (Cwlth).

Commonwealth adjacent area, for Queensland, means—

(a) if the *Petroleum (Submerged Lands) Act 1967* (Cwlth) is in force—the adjacent area in respect of Queensland under section 5A of that Act, including the Coral Sea area within the meaning of that section; or

(b) if the Act mentioned in paragraph (a) has been repealed and re-enacted (with or without modification)—the area

that, under the re-enacted Act of the Commonwealth, corresponds to the adjacent area in respect of Queensland under section 5A of the repealed Act, including the Coral Sea area within the meaning of that section.

Commonwealth adjacent area, for a State, other than Queensland, or for the Northern Territory, means—

- (a) if the *Petroleum (Submerged Lands) Act 1967* (Cwlth) is in force—the adjacent area in respect of the State or Territory for the purposes of that Act; or
- (b) if the Act mentioned in paragraph (a) has been repealed and re-enacted (with or without modification)—the area that, under the re-enacted Act of the Commonwealth, corresponds to the adjacent area in respect of the State or Territory for the purposes of the repealed Act.

Commonwealth Minister means the Minister of the Commonwealth for the time being administering the Commonwealth Act.

facility, for part 3A, see section 151A.

interstate Minister, for part 3A, see section 151A.

listed OHS laws see section 151C.

offshore petroleum operations means operations, including diving operations, that—

- (a) relate to—
 - (i) the exploration for petroleum; or
 - (ii) the recovery, processing, storage, offloading or piped conveyance of petroleum; and
- (b) if the operations are diving operations—take place in the adjacent area; and
- (c) if the operations are not diving operations—take place at a facility.

OHS inspector means a person appointed as an OHS inspector under the Commonwealth Act.

operation means an activity to which part 3 applies.

Safety Authority means the National Offshore Petroleum Safety Authority established by the Commonwealth Act.¹.

5 Amendment of s 5 (Effect of territorial sea baseline changes on pipeline licence)

(1) Section 5(1)(c)(ii)—

omit, insert—

‘(ii) falls within the Commonwealth adjacent area for a State or the Northern Territory.’.

(2) Section 5(2), ‘area.’²—

omit, insert—

‘area.’.

6 Amendment of pt 1, div 2, hdg (Administration of the Commonwealth adjacent area)

Part 1, division 2, heading, after ‘area’—

insert—

‘for Queensland’.

7 Replacement of s 9 (Commonwealth adjacent area)

Section 9—

omit, insert—

‘9 Definition for div 2

‘In this division—

Commonwealth Act means, as the context requires—

(a) the *Petroleum (Submerged Lands) Act 1967* (Cwlth); or

(b) the *Petroleum (Submerged Lands) Fees Act 1994* (Cwlth); or

1 Under the provisions of the Commonwealth Act, that Act does not apply to the area after the change or reassessment.

- (c) the *Petroleum (Submerged Lands) (Registration Fees) Act 1967* (Cwlth).’.

8 Amendment of s 10 (Minister as member of Joint Authority)

Section 10, ‘the Commonwealth Act’—

omit, insert—

‘a Commonwealth Act’.

9 Amendment of s 11 (Minister as Designated Authority)

- (1) Section 11, ‘the Commonwealth Act’—

omit, insert—

‘a Commonwealth Act’.

- (2) Section 11, after ‘adjacent area’—

insert—

‘for Queensland’.

10 Amendment of 12 (Delegations under Commonwealth Act)

- (1) Section 12, ‘the Commonwealth Act’—

omit, insert—

‘a Commonwealth Act’.

- (2) Section 12, after ‘adjacent area’—

insert—

‘for Queensland’.

11 Amendment of s 13 (Public servants performing functions under Commonwealth Act)

- (1) Section 13, after ‘adjacent area’—

insert—

‘for Queensland’.

- (2) Section 13, ‘the Commonwealth Act’—
omit, insert—
‘a Commonwealth Act’.

12 Insertion of new s 14A

After section 14—
insert—

‘14A Disapplication of State occupational health and safety laws

- ‘(1) The prescribed occupational health and safety laws do not apply in relation to any of the following—
- (a) a facility;
 - (b) a person at a facility;
 - (c) a person near a facility, to the extent the person is affected by—
 - (i) a facility; or
 - (ii) activities taking place at a facility;
 - (d) activities taking place at a facility.
- ‘(2) For subsection (1), a reference to the prescribed occupational health and safety laws is a reference to the provisions of those laws that, if subsection (1) did not apply, would apply in the adjacent area because of section 14, the cooperative scheme under the *Crimes at Sea Act 2001* or the *Acts Interpretation Act 1954*, section 9.
- ‘(3) In this section—
facility see schedule 3, section 2.
prescribed occupational health and safety laws means any of the following to the extent they relate to occupational health and safety—
- (a) the *Dangerous Goods Safety Management Act 2001*;
 - (b) the *Electrical Safety Act 2002*;
 - (c) the *Explosives Act 1999*;

- (d) the *Petroleum Act 1923*;
 - (e) the *Workplace Health and Safety Act 1995*;
 - (f) another law of the State that—
 - (i) relates to occupational health and safety, whether or not it also relates to other matters; and
 - (ii) is prescribed for the purpose of this paragraph.
- ‘(4) Unless it is repealed sooner, a regulation made for the purpose of subsection (3)(f) expires 1 year after it commences.
- ‘(5) If a regulation is made for the purpose of subsection (3)(f), a later regulation having the same effect may not be made.
- ‘(6) This section applies despite section 14(1) and (2).’.

13 Amendment of s 15 (Jurisdiction of State limits)

Section 15, heading, ‘limits’—

omit, insert—

‘**courts**’.

14 Amendment of s 59 (“Unit development”)

Section 59(11)(b), from ‘into the adjacent’ to ‘that Act’—

omit, insert—

‘into the Commonwealth adjacent area for a State, other than Queensland, or for the Northern Territory’.

15 Amendment of s 64 (Application for pipeline licence)

Section 64(2)(b), after ‘in a licence area’—

insert—

‘of a production licence’.

16 Amendment of s 65 (Grant or refusal of pipeline licence)

Section 65(5), ‘licence area under’—

omit, insert—

‘licence area of a production licence under’.

17 Insertion of new s 124A

After section 124—

insert—

‘124A Interfering with offshore petroleum installation or operations

‘(1) A person must not wilfully—

- (a) cause damage to, or interfere with, a structure or vessel in the adjacent area that is, or is to be, used in exploring for, recovering, processing, storing, preparing for transport, or transporting, petroleum; or
- (b) interfere with operations or activities being carried out, or works being executed, on, or by means of, or in connection with, a structure or vessel mentioned in paragraph (a).

Maximum penalty—660 penalty units or 10 years imprisonment.

‘(2) In this section—

structure means a fixed, moveable or floating structure or installation and includes, for example, a pipeline, pumping station, tank station or valve station.’

18 Insertion of new pt 3A

After part 3—

insert—

‘Part 3A National Offshore Petroleum Safety Authority

‘Division 1 Preliminary

‘151A Definitions for pt 3A

‘In this part—

Board means the National Offshore Petroleum Safety Authority Board under the Commonwealth Act.

CEO means the chief executive officer of the Safety Authority.

facility see schedule 3.

interstate Minister means the Minister of a State, other than Queensland, or the Northern Territory who is authorised for the time being under the law of the State or Territory to perform the functions of a Designated Authority under the Commonwealth Act.

‘151B Occupational health and safety

‘Schedule 3 has effect.

‘151C Listed OHS laws

‘The following provisions are the *listed OHS laws*—

- (a) section 124A, to the extent it relates to—
 - (i) damage to, or interference with, a facility; or
 - (ii) interference with operations or activities being carried out, or works being executed, on, by means of, or in connection with, a facility;
- (b) schedule 3;
- (c) a regulation made for schedule 3;
- (d) a regulation made for section 151D;
- (e) another regulation relating to occupational health and safety matters prescribed for this paragraph.

‘151D Regulation-making power—occupational health and safety

- ‘(1) Regulations may make provision in relation to the occupational health and safety of persons at or near a facility who are under the control of a person who is carrying on an operation.
- ‘(2) Without limiting subsection (1), a regulation may—
 - (a) require a person who is carrying on an operation to establish and maintain a system of management to secure the occupational health and safety of persons mentioned in the subsection; and
 - (b) provide for the requirements with which the system must comply.

‘Division 2 Functions and powers of the Safety Authority**‘151E Safety Authority’s functions**

‘The Safety Authority has the following functions—

- (a) the functions conferred on it by or under this Act in relation to offshore petroleum operations;
- (b) to promote the occupational health and safety of persons engaged in offshore petroleum operations;
- (c) to develop and implement effective monitoring and enforcement strategies to secure compliance by persons with their occupational health and safety obligations under this Act;
- (d) to investigate accidents, occurrences and circumstances that affect, or have the potential to affect, the occupational health and safety of persons engaged in offshore petroleum operations; and
- (e) to report, as appropriate, to the Minister and the Commonwealth Minister on the investigations mentioned in paragraph (d);

- (f) to advise persons, either on its own initiative or on request, on occupational health and safety matters relating to offshore petroleum operations;
- (g) to make reports, including recommendations, to the Minister and the Commonwealth Minister on issues relating to the occupational health and safety of persons engaged in offshore petroleum operations;
- (h) to cooperate with—
 - (i) the Minister and State agencies having functions relating to offshore petroleum operations; and
 - (ii) Commonwealth agencies having functions relating to offshore petroleum operations.

‘151F Safety Authority’s ordinary powers

- ‘(1) The Safety Authority has power to do all things necessary or convenient to be done in performing its functions.
- ‘(2) The Safety Authority’s powers include, but are not limited to, the following powers—
 - (a) the power to acquire, hold and dispose of real and personal property;
 - (b) the power to enter into contracts;
 - (c) the power to lease the whole or part of any land or building for the purposes of the Safety Authority;
 - (d) the power to occupy, use and control any land or building owned or held under lease by the Commonwealth and made available for the purposes of the Safety Authority;
 - (e) the power to conduct research and development projects and to cooperate with others in those projects;
 - (f) the power to apply for and hold patents and exploit patents;
 - (g) the power to do anything incidental to any of its functions.

‘151G Judicial notice of seal

‘All courts, judges and persons acting judicially must—

- (a) take judicial notice of the imprint of the seal of the Safety Authority appearing on a document; and
- (b) presume that the document was duly sealed.

‘Division 3 Safety Authority Board**‘151H Functions of the Board**

‘(1) The Board has the following functions—

- (a) to give advice, and make recommendations, to the CEO about the operational policies and strategies to be followed by the Safety Authority in the performance of its functions;
- (b) to give advice, and make recommendations, to each of the following about 1 or more prescribed matters—
 - (i) the Minister;
 - (ii) the Commonwealth Minister;
 - (iii) interstate Ministers;
 - (iv) the body known as the Ministerial Council on Mineral and Petroleum Resources;
- (c) the other functions, if any, stated in a written notice given by the Commonwealth Minister to the Chair of the Board.

‘(2) As soon as practicable after the Board gives advice, or makes recommendations, under subsection (1)(b) to a Minister or body mentioned in subsection (1)(b)(i), (iii) or (iv), the Board must give the Commonwealth Minister a written copy of the advice or recommendations.

‘(3) In this section—

prescribed matters means the following matters—

- (a) policy or strategic matters relating to the occupational health and safety of persons engaged in offshore petroleum operations;
- (b) the performance by the Safety Authority of its functions.

‘151I Powers of the Board

‘The Board has power to do all things necessary or convenient to be done in performing its functions.

‘151J Validity of decisions

‘The performance of the functions, or the exercise of the powers, of the Board is not affected only because of there being a vacancy or vacancies in the membership of the Board.

‘Division 4 Chief executive officer and staff of the Safety Authority

‘151K CEO acts for Safety Authority

‘Anything done by the CEO in the name of the Safety Authority or on the Safety Authority’s behalf is taken to have been done by the Safety Authority.

‘151L Working with the Board

- ‘(1) The CEO must request the Board’s advice on strategic matters relating to the performance of the Safety Authority’s functions.
- ‘(2) The CEO must have regard to the advice given to him or her by the Board, whether or not the advice was given in response to a request.
- ‘(3) The CEO must—
 - (a) keep the Board informed of the Safety Authority’s operations; and

- (b) give the Board such reports, documents and information in relation to those operations as the Chair of the Board requires.

‘151M Delegation by CEO

- ‘(1) A public service employee may perform any function and exercise any power delegated to the employee by the CEO under the Commonwealth Act.
- ‘(2) In performing a function or exercising a power under the delegation, the delegate must comply with the directions of the CEO.

‘151N Secondments to Safety Authority

‘A public service employee may assist the Safety Authority in performing its functions or exercising its powers under this Act, the Commonwealth Act, or a corresponding law.

‘Division 5 Other Safety Authority provisions

‘151O Minister may require the Safety Authority to prepare reports or give information

- ‘(1) The Minister may, by written notice given to the Safety Authority, require the Safety Authority to—
 - (a) prepare a report about 1 or more stated matters relating to the performance of the Safety Authority’s functions or the exercise of the Safety Authority’s powers; and
 - (b) give a copy of the report to each of the following persons within the period stated in the notice—
 - (i) the Minister;
 - (ii) each interstate Minister;
 - (iii) the Commonwealth Minister.
- ‘(2) The Minister may, by written notice given to the Safety Authority, require the Safety Authority to—
 - (a) prepare a document setting out stated information relating to the performance of the Safety Authority’s

functions or the exercise of the Safety Authority's powers; and

- (b) give a copy of the document to each of the following persons within the period stated in the notice—
 - (i) the Minister;
 - (ii) each interstate Minister;
 - (iii) the Commonwealth Minister.
- '(3) The Safety Authority must comply with a requirement under subsection (1) or (2).

'151P Directions to Safety Authority

- '(1) The Minister may request the Commonwealth Minister to give a direction, under section 150YX of the Commonwealth Act, to the Safety Authority that relates wholly or principally to the Safety Authority's operations in the adjacent area.
- '(2) The Commonwealth Minister must use his or her best endeavours to make a decision on the request within 30 days after receiving the request.
- '(3) If the Commonwealth Minister refuses the request, the Commonwealth Minister must give the Minister a written statement setting out the reasons for the refusal.
- '(4) The Safety Authority must comply with a direction given by the Commonwealth Minister at the Minister's request under this section.

'151Q Reviews of operations of Safety Authority

- '(1) The Minister must cause reviews to be conducted of the operations of the Safety Authority in relation to the adjacent area.
- '(2) The Minister must cause to be prepared a report of a review under subsection (1).
- '(3) The first review is to relate to the 3 year period beginning on 1 January 2005, and is to be completed within 6 months, or a longer period allowed by the Minister, after the end of the 3 year period.

- ‘(4) Subsequent reviews are to relate to successive 3 year periods, and must be completed within 6 months, or a longer period allowed by the Minister, after the end of the 3 year period to which the review relates.
- ‘(5) A review under this section may be conducted in conjunction with a review under the Commonwealth Act or a corresponding law, or both.
- ‘(6) Without limiting the matters to be covered by a review under subsection (1), the review must include an assessment of the effectiveness of the Safety Authority in bringing about improvements in the occupational health and safety of persons engaged in offshore petroleum operations.
- ‘(7) The Minister must cause a copy of the report of a review under subsection (1) to be tabled in the Legislative Assembly within 15 sitting days after the report of the review is completed.
- ‘(8) For this section, a review is completed when the report of the review is made available to the Minister.

‘151R Liability for acts and omissions

- ‘(1) This section applies to the following persons—
 - (a) the Safety Authority;
 - (b) the CEO;
 - (c) an OHS inspector;
 - (d) a person acting under the direction or authority of the Safety Authority or the CEO.
- ‘(2) A person to whom this section applies is not personally liable for anything done or omitted to be done in good faith—
 - (a) in the performance of a function under a listed OHS law; or
 - (b) in the reasonable belief that the act or omission was in the performance of a function under a listed OHS law.’.

19 Insertion of new sch 3

After schedule 2—

insert—

‘Schedule 3 Occupational health and safety

section 151B

‘Part 1 Preliminary

‘1 Objects

‘The objects of this schedule are, in relation to facilities in the adjacent area—

- (a) to secure the occupational health and safety and welfare of persons at or near those facilities; and
- (b) to protect persons at or near those facilities from risks to occupational health and safety arising out of the activities being conducted at those facilities; and
- (c) to ensure expert advice is available on occupational health and safety matters in relation to those facilities; and
- (d) to promote an occupational environment for members of the workforce at those facilities that is adapted to their needs relating to health and safety; and
- (e) to foster a consultative relationship between all relevant persons concerning the health, safety and welfare of members of the workforce at those facilities.

‘2 Definitions for sch 3

‘In this schedule—

accident includes the contraction of a disease.

associated offshore place, in relation to a facility, means an offshore place near the facility where activities, including diving activities, relating to the construction, installation, operation, maintenance or decommissioning of the facility take place, but does not include any of the following—

- (a) another facility;
- (b) a supply vessel, offtake tanker, anchor handler or tugboat;
- (c) a vessel or structure that is declared by the regulations not to be an associated offshore place.

contract includes an arrangement or understanding.

contractor has the meaning given by section 6.

dangerous occurrence means an occurrence declared by the regulations to be a dangerous occurrence for the purposes of this definition.

designated work group means—

- (a) a group of members of the workforce at a facility that is established as a designated work group under section 16 or 17; or
- (b) that group as varied under section 18 or 19.

employee, in relation to an employer, means an employee of that employer.

employer means an employer who carries on an activity at a facility.

facility means a facility within the meaning of section 3, and—

- (a) includes a facility being constructed or installed; and
- (b) except for the definition *associated offshore place*, includes an associated offshore place in relation to a facility.

group member, in relation to a designated work group at a facility, means a person who is—

- (a) a member of the workforce at the facility; and
- (b) included in the designated work group.

improvement notice means an improvement notice issued under section 68(1).

inspection means an inspection conducted under part 4 and includes an investigation or inquiry.

member of the workforce, in relation to a facility, means an individual who does work at the facility, whether—

- (a) as an employee of the operator of the facility or another person; or
- (b) as a contractor of the operator or of another person.

operator, in relation to a facility or proposed facility, means the person who, under the regulations, is taken to be the operator of the facility or proposed facility.

operator's representative at a facility means a person present at the facility in compliance with the obligations imposed on the operator under section 4.

own includes own jointly or own in part.

plant includes machinery or equipment, or a tool, or a component.

premises includes each of the following—

- (a) a structure or building;
- (b) a place, whether or not enclosed or built on;
- (c) a part of a thing mentioned in paragraph (a) or (b).

prescribed person, for part 4, division 3, subdivision 4, see section 60.

prohibition notice means a prohibition notice issued under section 66(1).

proposed facility means a facility proposed to be constructed, installed or operated.

recovery, in relation to petroleum, includes all processes directly or indirectly associated with its recovery.

registered organisation means an organisation within the meaning of the *Workplace Relations Act 1996* (Cwlth).

regulated business premises means—

- (a) a facility; or
- (b) premises that are—
 - (i) occupied by a person who is the operator of a facility; or

- (ii) used, or proposed to be used, wholly or principally in connection with offshore petroleum operations.

regulations means regulations made for the purposes of this schedule.

reviewing authority means the Australian Industrial Relations Commission.

work means work offshore that is directly or indirectly related to the construction, installation, operation, maintenance or decommissioning of a facility.

workforce representative means—

- (a) in relation to a person who is a member of the workforce at a facility—a registered organisation of which the person is a member, if the person is qualified to be a member of that organisation because of the work the person performs at the facility; or
- (b) in relation to a designated work group or a proposed designated work group—a registered organisation of which a person who is, or is likely to be, in the work group is a member, if the person is qualified to be a member of that organisation because of the work the person performs, or will perform, at the facility.

work group employer, in relation to a designated work group at a facility, means an employer of 1 or more group members, but does not include the operator of the facility.

workplace, in relation to a facility, means the whole facility or a part of the facility.

‘3 Facilities

- ‘(1) A vessel or structure is taken to be a facility for the purposes of this schedule while that vessel or structure—
 - (a) is located at a site in the adjacent area; and
 - (b) is being used, or prepared for use, at the site for any of the following purposes—
 - (i) the recovery of petroleum, the processing of petroleum, or the storage and offloading of petroleum, or any combination of those activities;

- (ii) the provision of accommodation for persons working on another facility, whether connected by a walkway to the other facility or not;
 - (iii) drilling or servicing a well for petroleum or doing work associated with the drilling or servicing process;
 - (iv) laying pipes for petroleum, including any manufacturing of the pipes, or doing work on an existing pipe;
 - (v) the erection, dismantling or decommissioning of a vessel or structure mentioned in any of subparagraphs (i) to (iv);
 - (vi) another purpose related to offshore petroleum operations that is prescribed for the purpose of this subparagraph.
- ‘(2) Subsection (1) applies to a vessel or structure—
- (a) whether it is floating or fixed; and
 - (b) whether or not it is capable of independent navigation.
- ‘(3) Subsection (1) has effect subject to subsections (6) and (7).
- ‘(4) A vessel or structure used for a purpose mentioned in subsection (1)(b)(i) includes—
- (a) any wells and associated plant and equipment by means of which petroleum processed or stored at the vessel or structure is recovered; and
 - (b) any pipe or system of pipes through which petroleum is conveyed from a well to the vessel or structure; and
 - (c) any secondary line associated with the vessel or structure.
- ‘(5) For subsection (1), a vessel or structure that is located offshore for the purpose of laying pipes as described in subsection (1)(b)(iv) is taken to be located at a site, despite the fact that the vessel or structure moves as the pipe laying process proceeds.
- ‘(6) Despite subsection (1), a vessel or structure is taken not to be a facility for the purposes of this schedule if the vessel or structure is any of the following—

- (a) an offtake tanker;
 - (b) a tug or an anchor handler;
 - (c) a vessel or structure used for supplying a facility or otherwise travelling between a facility and the shore;
 - (d) a vessel or structure used for any purpose such that it is declared by the regulations not to be a facility.
- ‘(7) In deciding when a vessel or structure that has the potential to be used for 1 or more of the purposes mentioned in subsection (1)(b) is in fact being so used, the vessel or structure is taken—
- (a) to commence to be so used only at the time when it arrives at the site where it is to be so used and any activities necessary to make it operational at that site are begun; and
 - (b) to cease to be so used when operations cease, and the vessel or structure has been returned either to a navigable form or to a form in which it can be towed to another place.
- ‘(8) Each of the following is taken to be a facility for the purposes of this schedule—
- (a) a pipeline subject to a pipeline licence;
 - (b) if a pipeline subject to a pipeline licence conveys petroleum recovered from a well without the petroleum having passed through another facility—the pipeline, together with—
 - (i) the well and associated plant and equipment; and
 - (ii) a pipe or system of pipes through which petroleum is conveyed from that well to that pipeline.
- ‘(9) In subsection (8)(b)—
- facility* does not include a pipeline.

‘4 **Operator must ensure presence of operator’s representative**

- ‘(1) The operator of a facility must ensure that, at all times when 1 or more individuals are present at a facility, there is also

present an individual (the *operator's representative at the facility*) who has day-to-day management and control of operations at the facility.

Maximum penalty—75 penalty units.

- ‘(2) The operator of a facility must ensure that the name of the operator’s representative at the facility is displayed in a prominent place at the facility.

Maximum penalty—75 penalty units.

- ‘(3) Subsection (1) does not imply that, if the operator is an individual, the operator’s representative at the facility may not be, from time to time, the operator.

‘5 **Health and safety of persons using an accommodation facility**

‘To remove doubt, it is declared that a reference in this schedule to the occupational health and safety of a person includes a reference to the health and safety of a person using an accommodation facility provided for the accommodation of persons working on another facility.

‘6 **Contractor**

‘For this schedule, an individual is taken to be a *contractor* of another person (the *relevant person*) if the individual does work at a facility under a contract for services between—

- (a) the relevant person; and
- (b) either—
 - (i) the individual; or
 - (ii) the employer of the individual.

‘Part 2 Occupational health and safety

‘Division 1 Duties relating to occupational health and safety

‘7 Duties of operator

- ‘(1) The operator of a facility must take all reasonably practicable steps to ensure—
- (a) the facility is safe and without risk to the health of any person at or near the facility; and
 - (b) all work and other activities carried out on the facility are carried out in a manner that is safe and without risk to the health of any person at or near the facility.

Maximum penalty—1 470 penalty units.

- ‘(2) Without limiting subsection (1), the operator of a facility must do each of the following—
- (a) provide and maintain a physical environment at the facility that is safe and without risk to health;
 - (b) provide and maintain adequate facilities for the welfare of all members of the workforce at the facility;
 - (c) ensure any plant, equipment, materials and substances at the facility are safe and without risk to health;
 - (d) implement and maintain systems of work at the facility that are safe and without risk to health;
 - (e) implement and maintain appropriate procedures and equipment for the control of, and response to, emergencies at the facility;
 - (f) provide all members of the workforce, in appropriate languages, with the information, instruction, training and supervision necessary for them to carry out their activities in a manner that does not adversely affect the occupational health and safety of persons at the facility;

- (g) monitor the occupational health and safety of all members of the workforce and keep records of that monitoring;
- (h) provide appropriate medical and first aid services at the facility;
- (i) develop, in consultation with members of the workforce and workforce representatives, a policy relating to occupational health and safety that—
 - (i) will enable the operator and the members of the workforce to co-operate effectively in promoting and developing measures to ensure the occupational health and safety of persons at the facility; and
 - (ii) will provide adequate mechanisms for reviewing the effectiveness of the measures; and
 - (iii) provides for the making of an agreement that complies with subsections (4) and (5).

Maximum penalty—1 470 penalty units.

- ‘(3) Subsection (2)(i) does not require the operator of a facility to engage in consultations with a workforce representative unless a member of the workforce at the facility has requested the workforce representative to be involved in those consultations.
- ‘(4) The agreement mentioned in subsection (2)(i)(iii) must be between—
 - (a) on the 1 hand—the operator; and
 - (b) on the other hand—
 - (i) the members of the workforce; and
 - (ii) if a member of the workforce at the facility has requested a workforce representative in relation to the member to be a party to that agreement—the workforce representative.
- ‘(5) The agreement mentioned in subsection (2)(i)(iii) must provide appropriate mechanisms for continuing consultation between—
 - (a) on the 1 hand—the operator; and

- (b) on the other hand—
 - (i) the members of the workforce; and
 - (ii) if a member of the workforce at the facility has requested a workforce representative in relation to the member to be involved in consultations on a particular occasion—the workforce representative.
- ‘(6) The agreement may provide for other matters agreed between the parties to it.

‘8 **Duties of persons in control of parts of facility or particular work**

- ‘(1) A person who is in control of any part of a facility, or of any particular work carried out at a facility, must take all reasonably practicable steps to ensure—
 - (a) that part of the facility, or the place where that work is carried out, is safe and without risk to health; and
 - (b) if the person is in control of particular work—the work is carried out in a manner that is safe and without risk to health.

Maximum penalty—1 470 penalty units.

- ‘(2) Without limiting subsection (1), a person who is in control of any part of a facility, or of any particular work carried out at a facility, must do each of the following—
 - (a) ensure the physical environment at that part of the facility, or at the place where the work is carried out, is safe and without risk to health;
 - (b) ensure any plant, equipment, materials and substances at or near that part of the facility or that place, or used in that work, are safe and without risk to health;
 - (c) implement and maintain systems of work at that part of the facility, or in carrying out work at that place, that are safe and without risk to health;
 - (d) ensure a means of access to, and egress from, that part of the facility or that place that is safe and without risk to health;

- (e) provide all members of the workforce located at that part of the facility or engaged on that work, in appropriate languages, with the information, instruction, training and supervision necessary for them to carry out their work in a manner that is safe and without risk to health.

Maximum penalty—1 470 penalty units.

‘9 Duties of employers

- ‘(1) An employer must take all reasonably practicable steps to protect the health and safety of employees at a facility.

Maximum penalty—1 470 penalty units.

- ‘(2) Without limiting subsection (1), an employer must do each of the following—

- (a) provide and maintain a working environment that is safe for employees and without risk to their health;
- (b) ensure any plant, equipment, materials and substances used in connection with the employees' work are safe and without risk to health;
- (c) implement and maintain systems of work that are safe and without risk to health;
- (d) provide a means of access to, and egress from, the employees' work location that is safe and without risk to health;
- (e) provide the employees, in appropriate languages, with the information, instruction, training and supervision necessary for them to carry out their work in a manner that is safe and without risk to health.

Maximum penalty—1 470 penalty units.

- ‘(3) A person (the *principal*) has, in relation to a contractor of the principal, the same obligations that an employer has under subsections (1) and (2) in relation to an employee of the employer, but only in relation to—

- (a) matters over which the principal has control; or
- (b) matters over which—

- (i) the principal would have had control apart from express provision to the contrary in a contract; and
- (ii) the principal would, in the circumstances, usually be expected to have had control.

‘(4) An employer must take all reasonable steps to—

- (a) monitor the health and safety of employees; and
- (b) keep records of that monitoring.

Maximum penalty—1 470 penalty units.

‘10 **Duties of manufacturers in relation to plant and substances**

‘(1) A manufacturer of plant that the manufacturer ought reasonably to expect will be used by members of the workforce at a facility must take all reasonably practicable steps—

- (a) to ensure the plant is so designed and constructed as to be, when properly used, safe and without risk to health; and
- (b) to carry out, or cause to be carried out, the research, testing and examination necessary in order to discover, and to eliminate or minimise, any risk to health and safety that may arise from the use of the plant; and
- (c) to make available, in connection with the use of the plant at a facility, adequate written information about—
 - (i) the use for which it is designed and has been tested; and
 - (ii) details of its design and construction; and
 - (iii) any conditions necessary to ensure that, when put to the use for which it was designed and tested, it will be safe and without risk to health.

Maximum penalty—300 penalty units.

‘(2) A manufacturer of a substance that the manufacturer ought reasonably to expect will be used by members of the workforce at a facility must take all reasonably practicable steps—

- (a) to ensure the substance is so manufactured as to be, when properly used, safe and without risk to health; and
- (b) to carry out, or cause to be carried out, the research, testing and examination necessary to discover, and to eliminate or minimise, any risk to health and safety that may arise from the use of the substance; and
- (c) to make available, in connection with the use of the substance at a facility, adequate written information concerning—
 - (i) the use for which it is manufactured and has been tested; and
 - (ii) details of its composition; and
 - (iii) any conditions necessary to ensure that, when put to the use for which it was manufactured and tested, it will be safe and without risk to health; and
 - (iv) the first aid and medical procedures that should be followed if the substance causes injury.

Maximum penalty—300 penalty units.

- ‘(3) Subsection (4) applies if—
 - (a) plant or a substance is imported into Australia by a person (the *importer*) who is not its manufacturer; and
 - (b) at the time of the importation, the manufacturer of the plant or substance does not have a place of business in Australia.
- ‘(4) The importer is taken, for this section, to be the manufacturer of the plant or substance.
- ‘(5) This section does not affect the operation of another law of the State that imposes an obligation on a manufacturer in relation to defective goods or in relation to information to be supplied in relation to goods.

‘11 Duties of suppliers of facilities, plant and substances

- ‘(1) A supplier of a facility, or of any plant or substance the supplier ought reasonably to expect will be used by members

of the workforce at a facility, must take all reasonably practicable steps—

- (a) to ensure that, at the time of supply, the facility, or the plant or substance, is in such condition as to be, when properly used, safe and without risk to health; and
- (b) to carry out, or cause to be carried out, the research, testing and examination necessary to discover, and to eliminate or minimise, any risk to health or safety that may arise from the condition of the facility, plant or substance; and
- (c) to make available to the prescribed person adequate written information, in connection with the use of the facility, plant or substance, as the case requires, about each of the following—
 - (i) the condition of the facility, plant or substance at the time of supply;
 - (ii) any risk to the health and safety of members of the workforce at the facility to which the condition of the facility, plant or substance may give rise unless it is properly used;
 - (iii) the steps that need to be taken to eliminate that risk;
 - (iv) in the case of a substance, the first aid and medical procedures that should be followed if the condition of the substance causes injury to a member of the workforce at the facility.

Maximum penalty—300 penalty units.

‘(2) Subsection (3) applies if—

- (a) a person (the *ostensible supplier*) supplies to a person—
 - (i) a facility; or
 - (ii) any plant or substance that is to be used by members of the workforce at a facility; and
- (b) the ostensible supplier—
 - (i) carries on the business of financing the acquisition or the use of goods by other persons; and

- (ii) has, in the course of that business, acquired an interest in the facility, or in the plant or substance, from another person (the *actual supplier*), solely for the purpose of financing its acquisition by, or its provision to, the person to whom it is finally supplied; and
 - (iii) has not taken possession of the facility, plant or substance, or has taken possession of the facility, plant or substance solely for the purpose of passing possession of the facility, plant or substance to the person to whom it is finally supplied.
- ‘(3) If this subsection applies, a reference in subsection (1) to a supplier is, in relation to the facility, plant or substance mentioned in subsection (2), taken to be a reference to the actual supplier and not a reference to the ostensible supplier.
- ‘(4) This section does not affect the operation of another law of the State that imposes an obligation about the sale or supply of goods or about the information to be supplied in relation to goods.
- ‘(5) In this section—
- prescribed person* means—
- (a) in relation to a facility—the operator of the facility; and
 - (b) in relation to plant or a substance—the person to whom the plant or substance is supplied.

‘12 Duties of persons erecting facility or installing plant

- ‘(1) A person who erects or installs a facility, or erects or installs any plant at a facility, must take all reasonably practicable steps to ensure the facility or plant is not erected or installed in a way that makes it unsafe or constitutes a risk to health.
- Maximum penalty—300 penalty units.
- ‘(2) This section does not affect the operation of another law of the State that imposes an obligation about the erection or installation of structures or goods or the supply of services.

‘13 Duties of persons in relation to occupational health and safety

- ‘(1) A person at a facility must, at all times, take all reasonably practicable steps—
- (a) to ensure the person does not take any action, or make any omission, that creates a risk, or increases an existing risk, to the occupational health and safety of the person or of another person at or near the facility; and
 - (b) in relation to any obligation imposed on the operator or on another person by or under a listed OHS law, to co-operate with the operator or the other person to the extent necessary to enable the operator or the other person to fulfil the obligation; and
 - (c) to use prescribed equipment in accordance with any instructions given by the equipment supplier, consistent with the safe and proper use of the equipment.

Maximum penalty—75 penalty units.

- ‘(2) Despite subsection (1), the choice or manner of use, or choice and manner of use, of prescribed equipment of the kind mentioned in subsection (5), definition *prescribed equipment*, paragraph (b), is a matter that may be, consistently with each listed OHS law—
- (a) agreed on between the equipment supplier and any relevant health and safety representative; or
 - (b) agreed on by a health and safety committee.
- ‘(3) If an agreement of the kind mentioned in subsection (2)(a) or (b) provides a process for choosing equipment of a particular kind that is to be provided by the equipment supplier, action must not be taken against a person for failure to use the equipment unless the equipment has been chosen in accordance with that process.
- ‘(4) If an agreement of the kind mentioned in subsection (2)(a) or (b) provides a process for deciding the manner of use of equipment of a particular kind, action must not be taken against a person for failure to use the equipment in the manner required by the equipment supplier unless the manner has been decided in accordance with that process.

‘(5) In this section—

prescribed equipment means equipment that is—

- (a) supplied to the person by the operator, an employer of the person or another person having control of work at a facility (the *equipment supplier*); and
- (b) necessary to protect the occupational health and safety of the person, or of another person at or near the facility.

‘14 **Reliance on information supplied or results of research**

‘(1) For the application of section 7, 8 or 9² to the use of plant or a substance, a person on whom an obligation is imposed under any of the sections is regarded as having taken reasonably practicable steps as required by the relevant section, in relation to the use of the plant or substance, to the extent—

- (a) the person ensured, so far as practicable, that its use was in accordance with the information supplied by the manufacturer or the supplier of the plant or substance relating to occupational health and safety in its use; and
- (b) it was reasonable for the person to rely on that information.

‘(2) For the application of section 10 or 11 to carrying out research, testing or examination of a facility, or any plant or substance, a person on whom an obligation is imposed under either of those sections is regarded as having taken reasonably practicable steps as required by the relevant section, in relation to carrying out the research, testing or examination of the facility, plant or substance, to the extent—

- (a) the research, testing or examination has already been carried out by or on behalf of someone else; and
- (b) it was reasonable for the person to rely on the research, testing or examination.

‘(3) For the application of section 12 to the erection of a facility or the erection or installation of plant at a facility, a person on

2 Section 7 (Duties of operator), 8 (Duties of persons in control of parts of facility or particular work) or 9 (Duties of employers)

whom an obligation is imposed under the section is regarded as having taken reasonably practicable steps as required by the section to the extent—

- (a) the person ensured, so far as is reasonably practicable, that the erection of the facility, or the erection or installation of the plant, was—
 - (i) in accordance with information supplied by the manufacturer or supplier of the facility or plant relating to its erection or its installation; and
 - (ii) consistent with the occupational health and safety of persons at the facility; and
 - (b) it was reasonable for the person to rely on the information.
- ‘(4) Nothing in this section limits the generality of what constitutes reasonably practicable steps as required by section 7, 8, 9, 10, 11 or 12.

‘Division 2 Regulations relating to occupational health and safety

‘15 Regulations relating to occupational health and safety

- ‘(1) The regulations may provide for any matter affecting, or likely to affect, the occupational health and safety of persons at a facility.
- ‘(2) A regulation made under subsection (1) may provide for any or all of the following—
 - (a) prohibiting or restricting the performance of all work or particular work at a facility;
 - (b) prohibiting or restricting the use of all plant or particular plant at a facility;
 - (c) prohibiting or restricting the carrying out of all processes or a particular process at a facility;
 - (d) prohibiting or restricting the storage or use of all substances or particular substances at a facility;

- (e) specifying the form in which information required to be made available under section 10(1)(c) or 11(1)(c) is to be made available;
- (f) prohibiting, except in accordance with licences granted under the regulations, the use of particular plant or particular substances at a facility;
- (g) providing for—
 - (i) the issue, variation, renewal, transfer, suspension and cancellation of those licences; and
 - (ii) the conditions to which the licences may be subject;
- (h) regulating the maintenance and testing of plant used at a facility;
- (i) regulating the labelling or marking of substances used at a facility;
- (j) regulating the transport of particular plant or particular substances for use at a facility;
- (k) prohibiting the performance, at a facility, of particular activities or work except—
 - (i) by persons who satisfy requirements under the regulations about qualifications, training or experience; or
 - (ii) under the supervision required under the regulations;
- (l) requiring particular action to avoid accidents or dangerous occurrences;
- (m) providing for, or prohibiting, particular action in the event of accidents or dangerous occurrences;
- (n) providing for the employment at a facility of persons to perform particular duties relating to the maintenance of occupational health and safety at the facility;
- (o) regulating the provision and use, at a facility, of protective clothing and equipment, safety equipment and rescue equipment;

- (p) providing for monitoring the health of members of the workforce at a facility and the conditions at the facility;
- (q) requiring employers to keep records of matters related to the occupational health and safety of employees;
- (r) providing for the provision of first aid equipment and facilities at facilities.

‘Part 3 Workplace arrangements

‘Division 1 Designated work groups

‘Subdivision 1 Establishment of designated work groups

‘16 Establishment of designated work groups by request

- ‘(1) A request to the operator of a facility to enter into consultations to establish designated work groups in relation to the members of the workforce at the facility may be made by—
 - (a) a member of the workforce; or
 - (b) if a member of the workforce requests a workforce representative in relation to the member to make the request to the operator—the workforce representative.
- ‘(2) The operator of a facility must, within 14 days after receiving a request under subsection (1), enter into consultations with—
 - (a) if a member of the workforce made a request to establish designated work groups—
 - (i) the member of the workforce; and
 - (ii) if the member requests that the operator enter into consultations with a workforce representative in relation to the member—the workforce representative; and

- (iii) each employer, if any, of members of the workforce; and
 - (b) if a workforce representative made a request to establish designated work groups—
 - (i) if a member of the workforce requests that the operator enter into consultations with that workforce representative—the workforce representative; and
 - (ii) each employer of members of the workforce.
- ‘(3) Within 14 days after the completion of consultations about the establishment of the designated work groups, the operator must, by notifying the members of the workforce, establish the designated work groups in accordance with the outcome of the consultations.

‘17 Establishment of designated work groups at initiative of operator

- ‘(1) If, at any time, the operator of a facility considers that designated work groups should be established, the operator must enter into consultations with—
- (a) all members of the workforce; and
 - (b) if a member of the workforce requests that the operator enter into consultations with a workforce representative in relation to the member—the workforce representative; and
 - (c) each employer, if any, of members of the workforce.
- ‘(2) Within 14 days after the completion of consultations about the establishment of the designated work groups, the operator must, by notifying the members of the workforce, establish the designated work groups in accordance with the outcome of the consultations.

‘Subdivision 2 Variation of designated work groups**‘18 Variation of designated work groups by request**

- ‘(1) A request to the operator of a facility to enter into consultations to vary designated work groups that have already been established in relation to the members of the workforce at the facility may be made by—
- (a) a member of the workforce; or
 - (b) if a member of the workforce requests a workforce representative in relation to the member to make the request to the operator—the workforce representative.
- ‘(2) The operator of a facility must, within 14 days after receiving a request under subsection (1), enter into consultations with—
- (a) if a member of the workforce made a request to vary designated work groups—
 - (i) the member of the workforce; and
 - (ii) the health and safety representative of each designated work group affected by the proposed variation; and
 - (iii) each work group employer, if any, in relation to each designated work group affected by the proposed variation; and
 - (b) if a workforce representative made a request to vary designated work groups—
 - (i) if a member of a designated work group affected by the proposed variation requests that the operator enter into consultations with that workforce representative in relation to the group—the workforce representative; and
 - (ii) the health and safety representative of each designated work group affected by the proposed variation; and
 - (iii) each work group employer, if any, in relation to each designated work group affected by the proposed variation.

- ‘(3) Subsection (4) applies if—
- (a) consultations take place about the variation of designated work groups that have already been established; and
 - (b) as a result of the consultations, it has been determined that the variation of some or all of those designated work groups is justified.
- ‘(4) Within 14 days after the completion of the consultations the operator must, by notifying the members of the workforce who are affected by the variation, vary the designated work groups in accordance with the outcome of the consultations.

‘19 Variation of designated work groups at initiative of operator

- ‘(1) If the operator of a facility believes the designated work groups should be varied, the operator may, at any time, enter into consultations about the variations with—
- (a) the health and safety representative of each designated work group affected by the proposed variation; and
 - (b) if a member of a designated work group affected by the proposed variation requests that the operator enter into consultations with a workforce representative in relation to the group—the workforce representative; and
 - (c) each work group employer, if any, in relation to each designated work group affected by the proposed variation.
- ‘(2) Subsection (3) applies if—
- (a) consultations take place about the variation of designated work groups that have already been established; and
 - (b) as a result of the consultations, it has been decided that the variation of some or all of those designated work groups is justified.
- ‘(3) Within 14 days after the completion of the consultations the operator must, by notifying the members of the workforce

who are affected by the variation, vary the designated work groups in accordance with the outcome of the consultations.

‘Subdivision 3 General

‘20 Referral of disagreement to reviewing authority

- ‘(1) If, in the course of consultations under section 16, 17, 18 or 19, there is a disagreement between any of the parties to the consultation about the manner of establishing or varying a designated work group, a party may, for the purpose of facilitating that consultation, refer the matter of disagreement to the reviewing authority.
- ‘(2) If the matter of a disagreement is referred to the reviewing authority, the parties to the disagreement must complete the consultation in accordance with the resolution of the matter by the reviewing authority.

‘21 Manner of grouping members of the workforce

- ‘(1) Consultations about the establishment or variation of a designated work group must be directed principally at deciding the manner of grouping members of the workforce—
- (a) that best and most conveniently enables their interests relating to occupational health and safety to be represented and safeguarded; and
 - (b) that best takes account of the need for any health and safety representative selected for the designated work group to be accessible to each group member.
- ‘(2) The parties to the consultations must have regard, in particular, to each of the following—
- (a) the number of members of the workforce at the facility to which the consultation relates;
 - (b) the nature of each type of work performed by the members;
 - (c) the number and grouping of the members who perform the same or similar types of work;

- (d) the workplaces where each type of work is performed;
 - (e) the nature of any risks to health and safety at each of the workplaces;
 - (f) any overtime or shift working arrangement at the facility.
- ‘(3) The designated work groups must be established or varied in a way that, so far as practicable, each of the members of the workforce at a facility is in a designated work group.
- ‘(4) All the members of the workforce at a facility may be in 1 designated work group.

‘Division 2 Health and safety representatives

‘Subdivision 1 Selection of health and safety representatives

‘22 Selection of health and safety representatives

- ‘(1) One health and safety representative may be selected for each designated work group.
- ‘(2) A person is not eligible for selection as the health and safety representative for a designated work group unless the person is a member of the workforce included in the group.
- ‘(3) A person is taken to have been selected as the health and safety representative for a designated work group if—
- (a) all the members of the workforce in the group unanimously agree to the selection; or
 - (b) the person is elected as the health and safety representative of the group under section 23.

‘23 Election of health and safety representatives

- ‘(1) This section applies if—
- (a) there is a vacancy in the office of health and safety representative for a designated work group; and

- (b) within a reasonable time after the vacancy occurs, a person has not been selected under section 22(3)(a).
- ‘(2) The operator of the facility must invite nominations from all group members for election as the health and safety representative of the group.
- ‘(3) If the office of health and safety representative is vacant and the operator has not invited nominations within a further reasonable time that is no later than 6 months after the vacancy occurred, the Safety Authority may direct the operator to invite nominations.
- ‘(4) If there is more than 1 candidate for election at the close of the nomination period, the operator must conduct, or arrange for the conduct of, an election at the operator’s expense.
- ‘(5) An election conducted or arranged to be conducted under subsection (4) must be conducted under a regulation made for the purposes of this subsection if this is requested by the lesser of—
- (a) 100 members of the workforce normally in the designated work group; or
 - (b) a majority of the members of the workforce normally in the designated work group.
- ‘(6) If there is only 1 candidate for election at the close of the nomination period, the person is taken to have been elected.
- ‘(7) A person can not be a candidate in the election if he or she is disqualified under section 29.
- ‘(8) All the members of the workforce in the designated work group are entitled to vote in the election.
- ‘(9) An operator conducting or arranging for the conduct of an election under this clause must comply with any relevant directions issued by the Safety Authority.

‘24 List of health and safety representatives

‘The operator of a facility must—

- (a) prepare and keep up to date a list of all the health and safety representatives of designated work groups

comprising members of the workforce performing work at the facility; and

- (b) ensure the list is available for inspection, at all reasonable times, by—
 - (i) members of the workforce at the facility; and
 - (ii) OHS inspectors.

‘25 Members of designated work group must be notified of selection etc of health and safety representative

‘The operator of a facility must—

- (a) notify members of a designated work group in relation to the facility of a vacancy in the office of health and safety representative for the designated work group within a reasonable time after the vacancy arises; and
- (b) notify those members of the name of any person selected, whether under section 22(3)(a) or (b), as health and safety representative for the designated work group within a reasonable time after the selection is made.

‘26 Term of office

- ‘(1) A health and safety representative for a designated work group holds office—
 - (a) if, in consultations that took place under section 16, 17, 18 or 19, the parties to the consultations agreed to the period for which the health and safety representative for the group was to hold office—for the agreed period; or
 - (b) if paragraph (a) does not apply—for 2 years.
- ‘(2) The term of office of a health and safety representative begins at the start of the day on which the representative was selected.
- ‘(3) Nothing in this section prevents a health and safety representative from being selected for further terms of office.

‘27 Training of health and safety representatives

- ‘(1) A health and safety representative for a designated work group must undertake a course of training relating to occupational health and safety that is accredited by the Safety Authority for the purposes of this section.
- ‘(2) The operator of the facility concerned must permit the representative to take any time off work, without loss of remuneration or other entitlements, that is necessary to undertake the training.
- ‘(3) If a person other than the operator is the employer of the representative, the employer must permit the representative to take any time off work, without loss of remuneration or other entitlements, that is necessary to undertake the training.

‘28 Resignation etc of health and safety representatives

- ‘(1) A person ceases to be the health and safety representative for the designated work group if—
 - (a) the person resigns as the health and safety representative; or
 - (b) the person ceases to be a group member of that designated work group; or
 - (c) the person’s term of office expires without the person having been selected, under section 22, to be the health and safety representative for the designated work group for a further term; or
 - (d) the person is disqualified under section 29.
- ‘(2) A person may resign as the health and safety representative for a designated work group by notice in writing delivered to the operator and each work group employer.
- ‘(3) If a person resigns as the health and safety representative for a designated work group, the person must notify the resignation to the group members.
- ‘(4) If a person has ceased to be the health and safety representative for a designated work group because of subsection (1)(b), the person must notify the following

persons in writing that the person has ceased to be the health and safety representative for that designated work group—

- (a) the group members; and
- (b) the operator and each work group employer.

‘29 Disqualification of health and safety representatives

- ‘(1) An application for the disqualification of a health and safety representative for a designated work group may be made to the Safety Authority by—
 - (a) the operator; or
 - (b) a work group employer; or
 - (c) at the request of a group member of the designated work group, a workforce representative in relation to the designated work group.
- ‘(2) An application under subsection (1) may be made on either or both of the following grounds—
 - (a) that action taken by the representative in the exercise or purported exercise of a power under section 31(1) or another provision of this schedule was taken—
 - (i) with the intention of causing harm to the operator or work group employer or to an undertaking of the operator or work group employer; or
 - (ii) unreasonably, capriciously or not for the purpose for which the power was conferred on the representative;
 - (b) that the representative has intentionally used, or disclosed to another person, for a purpose not connected with the exercise of a power of a health and safety representative, information acquired from the operator or work group employer.
- ‘(3) On an application under subsection (1), the Safety Authority may disqualify the representative, for a stated period not exceeding 5 years, from being a health and safety representative for any designated work group, if the Safety Authority is satisfied that the representative has acted in a manner mentioned in subsection (2).

- ‘(4) In making a decision under subsection (3), the Safety Authority must have regard to each of the following—
- (a) the harm, if any, that was caused to the operator or work group employer or to an undertaking of the operator or work group employer as a result of the action of the representative;
 - (b) the past record of the representative in exercising the powers of a health and safety representative;
 - (c) the effect, if any, on the public interest of the action of the representative;
 - (d) other matters the Safety Authority thinks relevant.

‘30 Deputy health and safety representatives

- ‘(1) One deputy health and safety representative may be selected for each designated work group for which a health and safety representative has been selected.
- ‘(2) A deputy health and safety representative is to be selected in the same way as a health and safety representative under section 22.
- ‘(3) Subsection (4) applies if the health and safety representative for a designated work group—
- (a) ceases to be the health and safety representative; or
 - (b) is unable, because of absence or for another reason, to exercise the powers of a health and safety representative.
- ‘(4) If this subsection applies—
- (a) the powers may be exercised by the deputy health and safety representative, if any, for the group; and
 - (b) this schedule, other than this section, applies in relation to the deputy health and safety representative accordingly.

‘Subdivision 2 Powers of health and safety representatives

‘31 Powers of health and safety representatives

- (1) A health and safety representative for a designated work group may, for the purpose of promoting or ensuring the health and safety at a workplace of the group members—
- (a) do all or any of the following—
 - (i) inspect the whole or any part of the workplace if there has, in the immediate past, been an accident or a dangerous occurrence at the workplace, or if there is an immediate threat of such an accident or dangerous occurrence;
 - (ii) inspect the whole or any part of the workplace if the health and safety representative has given reasonable notice of the inspection to the operator's representative at the facility and to another person having immediate control of the workplace;
 - (iii) make a request to an OHS inspector or to the Safety Authority that an inspection be conducted at the workplace;
 - (iv) accompany an OHS inspector during an inspection at the workplace by the OHS inspector, whether or not the inspection is being conducted as a result of a request made by the health and safety representative;
 - (v) if there is no health and safety committee for the members of the workforce at the facility—represent group members in consultations with the operator and any work group employer about the development, implementation and review of measures to ensure the health and safety of those members at the workplace;
 - (vi) if a health and safety committee has been established for the members of the workforce at the facility—examine any records of the committee; and

- (b) investigate complaints made by a group member to the health and safety representative about the health and safety of any of the members of the workforce, whether in the group or not; and
 - (c) with the consent of a group member, be present at an interview about health and safety at work between that member and any of the following persons—
 - (i) an OHS inspector;
 - (ii) the operator or a person representing the operator;
 - (iii) a work group employer or a person representing the employer; and
 - (d) obtain access to information under the control of the operator or a work group employer—
 - (i) relating to risks to the health and safety of a group member; and
 - (ii) relating to the health and safety of a group member; and
 - (e) issue provisional improvement notices under section 35.
- ‘(2) Subsection (1)(d)(ii) has effect subject to section 33.³

‘32 Assistance by consultant

- ‘(1) A health and safety representative for a designated work group is entitled, in exercising the representative’s powers, to be assisted by a consultant.
- ‘(2) Subject to subsection (3), a health and safety representative for a designated work group may—
 - (a) be assisted by a consultant at a workplace at which work is performed; or
 - (b) provide to a consultant information that has been provided to the health and safety representative by a group member under section 31(1)(d).

3 Section 33 (Information)

- ‘(3) Subsection (2) applies only if the operator or the Safety Authority has, in writing, agreed to the provision of the assistance at the workplace or the provision of the information, as the case may be.
- ‘(4) Neither the operator nor a workplace employer becomes, because of the agreement under subsection (3) to the provision of assistance by a consultant, liable for any remuneration or other expenses incurred in connection with the consultant’s activities.
- ‘(5) Subject to subsection (6), if a health and safety representative for a designated work group is being assisted by a consultant, the consultant is entitled to be present with the representative at an interview, about health and safety at work, between a group member and—
 - (a) an OHS inspector; or
 - (b) the operator, a work group employer or a person representing the operator or employer.
- ‘(6) A consultant may be present at an interview under subsection (5) only if the group member consents to the presence of the consultant.

‘33 Information

- ‘(1) Neither a health and safety representative nor a consultant assisting a health and safety representative is entitled, under section 31(1)(d)(ii), to have access to information in relation to which a group member is entitled to claim, and does claim, legal professional privilege.
- ‘(2) Neither a health and safety representative nor a consultant assisting a health and safety representative is entitled, under section 31(1)(d)(ii), to have access to information of a confidential medical nature relating to a person who is or was a group member unless—
 - (a) the person has delivered to the operator or a work group employer a written authority permitting the health and safety representative, or the health and safety representative and the consultant, as the case requires, to have access to the information; or

- (b) the information is in a form that does not identify the person or enable the identity of the person to be discovered.

‘34 Obligations and liabilities of health and safety representatives

‘This schedule does not—

- (a) impose an obligation on a person to exercise a power conferred on the person because the person is a health and safety representative; or
- (b) render a person liable in civil proceedings because of—
 - (i) a failure to exercise the power; or
 - (ii) the way the power was exercised.

‘35 Provisional improvement notices

‘(1) This section applies if—

- (a) a health and safety representative for a designated work group believes, on reasonable grounds, that a person—
 - (i) is contravening a provision of a listed OHS law; or
 - (ii) has contravened a provision of a listed OHS law and is likely to contravene that provision again; and
- (b) the contravention affects or may affect 1 or more group members.

‘(2) The representative must consult with the person supervising the relevant activity in an attempt to reach agreement on rectifying the contravention or preventing the likely contravention.

‘(3) If, in the health and safety representative’s opinion, agreement is not reached within a reasonable time, the health and safety representative may issue a provisional improvement notice to any or all of the persons (each of whom is a **responsible person**) responsible for the contravention.

- ‘(4) If a responsible person is the operator, the improvement notice may be issued to the operator by giving it to the operator’s representative at the facility.
- ‘(5) If it is not practicable to issue the notice to a responsible person, other than the operator or the supervisor, by giving it to the responsible person—
 - (a) the notice may be issued to the responsible person by giving it to the person who for the time being is, or may reasonably be presumed to be, on behalf of the responsible person, in charge of the activity to which the notice relates; and
 - (b) if the notice is issued under paragraph (a), a copy of the notice must be given to the responsible person as soon as practicable afterwards.
- ‘(6) The notice must—
 - (a) state the contravention that, in the health and safety representative’s opinion, is occurring or is likely to occur, and state the reasons for the opinion; and
 - (b) state a period within which the responsible person is to take action necessary to prevent any further contravention or to prevent the likely contravention, as the case may be.
- ‘(7) The period stated in the notice under subsection (6)(b) must be a period that—
 - (a) is not less than 7 days beginning on the day after the notice is issued; and
 - (b) is, in the representative’s opinion, reasonable.
- ‘(8) The notice may state action the responsible person is to take during the period stated in the notice.
- ‘(9) If, in the health and safety representative’s opinion, it is appropriate to do so, the representative may, in writing and before the end of the period, extend the period stated in the notice.
- ‘(10) On issuing the notice, the health and safety representative must give a copy of the notice to each of the following persons—

- (a) if the operator is not a responsible person—the operator;
- (b) each work group employer, other than a work group employer who is a responsible person;
- (c) if the supervisor is not a responsible person—the supervisor;
- (d) if the notice relates to any plant, substance or thing owned by a person other than a responsible person or a person to whom a copy of the notice is given under paragraph (a), (b) or (c)—the owner.

‘36 Effect of provisional improvement notice

- ‘(1) Within 7 days after a notice is issued under section 35, the responsible person or another person to whom a copy of the notice has been given under section 35(10) may request the Safety Authority or an OHS inspector for an inspection of the matter to be conducted.
- ‘(2) On the request being made, the operation of the notice is suspended pending the decision of the matter by an OHS inspector.
- ‘(3) As soon as possible after a request is made, an inspection must be conducted of the work that is the subject of the disagreement, and the OHS inspector conducting the inspection must—
 - (a) confirm, vary or cancel the notice and notify the responsible person and any person to whom a copy of the notice has been given under section 35(10) accordingly; and
 - (b) make decisions, and exercise powers, under part 4, as the OHS inspector considers necessary in relation to the work.
- ‘(4) If the OHS inspector varies a notice, the notice as varied has effect—
 - (a) to the extent the notice concerns obligations imposed on the responsible person that are unaffected by the variation, as if the notice as varied resumed effect on the day of the variation; and

- (b) to the extent the notice concerns new obligations imposed by virtue of the variation, as if the notice as varied were a new notice issued on the day of the variation.
- ‘(5) If the notice is issued to a responsible person, the responsible person must—
 - (a) notify each group member who is affected by the notice of the issue of the notice; and
 - (b) until the notice ceases to have effect, cause a copy of the notice to be displayed at or near each workplace at which the work that is the subject of the notice is being performed.
- ‘(6) The notice ceases to have effect if—
 - (a) it is cancelled by an OHS inspector or the health and safety representative; or
 - (b) the responsible person—
 - (i) takes the action, if any, stated in the notice; or
 - (ii) if no action is stated in the notice—takes the action necessary to prevent the further contravention, or likely contravention, concerned.
- ‘(7) The responsible person must—
 - (a) ensure, to the extent the notice relates to a matter over which the person has control, the notice is complied with; and
 - (b) take reasonable steps to inform the health and safety representative who issued the notice of the action taken to comply with the notice.
- ‘(8) For section 72,⁴ if the OHS inspector confirms or varies the notice, the OHS inspector is taken to have decided, under section 68, to issue an improvement notice in those terms.

4 Section 72 (Appeals)

‘Subdivision 3 Duties of the operator and other employers in relation to health and safety representatives

‘37 Duties of the operator and other employers in relation to health and safety representatives

- ‘(1) The operator of a facility in relation to which a designated work group having a health and safety representative has been established must—
- (a) on being requested to do so by the representative, consult with the representative on the implementation of changes at a workplace at which some or all of the group members perform work, being changes that may affect their health and safety; and
 - (b) in relation to a workplace at which some or all of the group members perform work—
 - (i) permit the representative to make an inspection of the workplace that the representative is entitled to make under section 31(1)(a)(i) and to accompany an OHS inspector during an inspection at the workplace by the OHS inspector; and
 - (ii) if there is no health and safety committee for the members of the workforce—on being requested to do so by the representative, consult with the representative about the development, implementation and review of measures to ensure the health and safety of group members; and
 - (c) permit the representative to be present at an interview at which the representative is entitled to be present under section 31(1)(c); and
 - (d) provide to the representative access to information to which the representative is entitled to obtain access under section 31(1)(d)(i) or (ii) and to which access has been requested; and
 - (e) permit the representative to take time off work, without loss of remuneration or other entitlements, that is

- necessary to exercise the powers of a health and safety representative; and
- (f) provide the representative with access to facilities, if—
- (i) the facilities are prescribed for the purpose of this paragraph; or
 - (ii) access to the facilities is necessary for the purposes of exercising the powers of a health and safety representative.
- ‘(2) Subsection (1)(d) has effect subject to subsections (3) and (4).
- ‘(3) The operator must not permit a health and safety representative in relation to a designated work group to have access to information under the control of the operator that is of a confidential medical nature and relates to a person who is or was a group member unless—
- (a) the person has delivered to the employer a written authority permitting the representative to have access to the information; or
 - (b) the information is in a form that does not identify the person or enable the identity of the person to be discovered.
- ‘(4) The operator is not required to give a health and safety representative access to information in relation to which the operator is entitled to claim, and does claim, legal professional privilege.
- ‘(5) The duties imposed under this section on the operator in relation to the health and safety representative for a designated work group apply equally, to the extent the matters to which the duties relate are within the control of a work group employer or of a supervisor of particular work, to the employer and to the supervisor.

‘Division 3 Health and safety committees

‘38 Health and safety committees

- ‘(1) A health and safety committee must be established in relation to the members of the workforce at a facility if—

- (a) the number of members normally present at the facility is not less than 50, whether or not the members are all at work at the facility at the same time; and
 - (b) the members of the workforce are included in 1 or more designated work groups; and
 - (c) the operator is requested to establish the committee by the health and safety representative for the designated work group or for 1 of the designated work groups.
- ‘(2) The health and safety committee consists of—
- (a) the number of members stated in an agreement reached between the operator and the members of the workforce; or
 - (b) if there is no such agreement, an equal number of—
 - (i) members chosen by the members of the workforce to represent the interests of members of the workforce; and
 - (ii) members chosen by the operator to represent the interests of the operator and the employer, other than the operator, of members of the workforce.
- ‘(3) The agreement mentioned in subsection (2)(a) may—
- (a) state the persons who are to be members to represent the interests of the operator and employers, other than the operator, of members of the workforce; and
 - (b) provide for the way in which persons who are to be members to represent the interests of members of the workforce are to be chosen.
- ‘(4) If a regulation made for the purposes of this section provides for procedures for selecting persons as members of health and safety committees to represent the interests of members of the workforce, an agreement mentioned in subsection (2)(a) must not provide for members to be chosen in a way that is inconsistent with the regulation.
- ‘(5) A health and safety committee must hold a meeting at least once every 3 months.

- ‘(6) The procedure at meetings of a health and safety committee must, except to the extent provided for under the regulations, be the procedure agreed to by the committee.
- ‘(7) A health and safety committee must cause minutes of its meetings to be kept, and must retain those minutes for a period of not less than 3 years.
- ‘(8) This section does not prevent an operator establishing, in consultation with registered unions or other persons, committees concerned with occupational health and safety in relation to undertakings carried on by the operator.

‘39 Functions of health and safety committees

- ‘(1) A health and safety committee has the following functions—
 - (a) assisting the operator of the facility concerned—
 - (i) to develop and implement measures designed to protect the health and safety at work of members of the workforce; and
 - (ii) to review and update measures used to protect the health and safety at work of those members;
 - (b) facilitating co-operation between the following persons in relation to occupational health and safety matters—
 - (i) the operator of the facility;
 - (ii) employers, other than the operator, of members of the workforce;
 - (iii) members of the workforce;
 - (c) assisting the operator to disseminate among members of the workforce, in appropriate languages, information relating to health and safety at work;
 - (d) any prescribed functions;
 - (e) other functions agreed between the operator and the health and safety committee.
- ‘(2) A health and safety committee has power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions.

- ‘(3) This schedule does not—
- (a) impose an obligation on a person to do any act, because the person is a member of a health and safety committee, in connection with the performance of a function conferred on the committee; or
 - (b) render a person liable in civil proceedings because of—
 - (i) a failure to do the act; or
 - (ii) the manner in which the act was done.

‘40 Duties of the operator and other employers in relation to health and safety committees

- ‘(1) If there is a health and safety committee, each relevant person must—
- (a) make available to the committee information possessed by the person relating to risks to health and safety to members of the workforce; and
 - (b) permit a member of the committee who is a member of the workforce to take time off work, without loss of remuneration or other entitlements, as is necessary for the member to adequately participate in the performance by the committee of its functions.
- ‘(2) Subsection (1)(a) has effect subject to subsections (3) and (4).
- ‘(3) A relevant person must not make available to a health and safety committee information of a confidential nature relating to a person who is or was a member of the workforce (a *worker*), unless—
- (a) the worker has authorised the information to be made available to the committee; or
 - (b) the information is in a form that does not identify the worker or enable the identity of the worker to be discovered.
- ‘(4) A relevant person is not required to make available to a health and safety committee information in relation to which the person is entitled to claim, and does claim, legal professional privilege.

‘(5) In this section—

relevant person means—

- (a) the operator; and
- (b) an employer, other than the operator, of a member of the workforce.

‘Division 4 **Emergency procedures**

‘41 **Action by health and safety representatives**

‘(1) This section applies if a health and safety representative for a designated work group has reasonable cause to believe there is an imminent and serious danger to the health or safety of a person at or near the facility unless a group member or group members cease to perform particular work.

‘(2) The representative must—

- (a) inform a person (a *supervisor*) supervising the group member or group members in the performance of the work of the danger; or
- (b) if no supervisor can be contacted immediately—
 - (i) direct the group member or group members to cease, in a safe manner, performing the work; and
 - (ii) as soon as practicable, inform a supervisor that the direction has been given.

‘(3) If a supervisor is informed under subsection (2)(a) of a danger to the health or safety of a person at or near the facility, the supervisor must take the action the supervisor thinks appropriate to remove the danger, which may include directing a group member or group members to cease, in a safe manner, to perform the work.

‘(4) Subsection (5) applies to a health and safety representative if—

- (a) the representative has informed a supervisor under subsection (2)(a) of a danger; and

- (b) the representative has reasonable cause to believe that, despite any action taken by the supervisor under subsection (3), there continues to be an imminent and serious danger to the health or safety of a person at or near the facility unless the group member or group members cease to perform particular work.
- ‘(5) The representative must—
- (a) direct the group member or group members to cease, in a safe manner, to perform the work; and
 - (b) as soon as practicable, inform the supervisor that the direction has been given.
- ‘(6) Subsection (7) applies if—
- (a) a health and safety representative gives a direction under subsection (2)(b), but is unable to agree with a supervisor whom the representative has informed under the subsection that there is a need for a direction under the subsection; or
 - (b) a health and safety representative gives a direction under subsection (5)(a).
- ‘(7) The representative or the supervisor may request the Safety Authority or an OHS inspector to conduct an inspection of the work that is the subject of the direction.
- ‘(8) As soon as possible after a request is made under subsection (7), an inspection must be conducted of the work that is the subject of the direction, and the OHS inspector conducting the inspection must make decisions, and exercise powers, under part 4 as the OHS inspector considers necessary in relation to the work.
- ‘(9) This section does not limit the power of a health and safety representative under section 31(1)(a)(iii) to request an OHS inspector or the Safety Authority to conduct an inspection at the workplace.

‘42 **Directions to perform other work**

- ‘(1) This section applies if—

- (a) a group member who is an employee has ceased to perform work, in accordance with the direction of a health and safety representative under section 41(2)(b) or (5)(a); and
 - (b) the cessation of work does not continue after—
 - (i) the health and safety representative has agreed with a person supervising work at the workplace where the work was being performed that the cessation of work was not, or is no longer, necessary; or
 - (ii) an OHS inspector has, under section 41(8), made a decision that the employee should perform the work.
- ‘(2) The employer may direct the employee to perform suitable alternative work, and the employee is to be taken, for all purposes, to be required to perform the other work under the terms and conditions of the employee’s employment.

‘Part 4 Inspections

‘Division 1 Powers, functions and duties of OHS inspectors

‘43 Powers, functions and duties of OHS inspectors

- ‘(1) An OHS inspector has the powers, functions and duties conferred or imposed by the listed OHS laws.
- ‘(2) The Safety Authority may give written directions specifying the manner in which, and the conditions subject to which, powers conferred on OHS inspectors by a listed OHS law are to be exercised.
- ‘(3) If the Safety Authority gives written directions under subsection (2), the powers of OHS inspectors must be exercised in accordance with those directions.

- ‘(4) The Safety Authority may, by notice in writing, impose restrictions, not inconsistent with any direction in force under subsection (2), on the powers conferred on a particular OHS inspector by a listed OHS law.
- ‘(5) If the Safety Authority imposes restrictions under subsection (4), the powers of the OHS inspector are taken to have been restricted accordingly.

‘Division 2 Inspections

‘44 Inspections

- ‘(1) An OHS inspector may, at any time, conduct an inspection—
 - (a) to ascertain whether the requirements of, or any requirements properly made under, a listed OHS law are being complied with; or
 - (b) concerning a contravention or a possible contravention of a listed OHS law; or
 - (c) concerning an accident or dangerous occurrence that has happened at a facility.
- ‘(2) The Safety Authority may direct an OHS inspector to conduct an inspection for a purpose mentioned in subsection (1).
- ‘(3) If directed to conduct an investigation by the Safety Authority under subsection (2), the OHS inspector must, unless the Safety Authority revokes the direction, conduct the inspection accordingly.

‘Division 3 Powers of OHS inspectors in relation to the conduct of inspections

‘Subdivision 1 Power of entry

‘45 Power of entry—general

- ‘(1) An OHS inspector may, for the purposes of an inspection, enter a place if—
- (a) its occupier consents to the entry; or
 - (b) it is a public place and the entry is made when it is open to the public; or
 - (c) the entry is authorised by a warrant; or
 - (d) it is a place of business to which this Act relates and the entry is made when the place is open for business or otherwise open for entry; or
 - (e) the OHS inspector may enter the place under section 46 or 47.
- ‘(2) However, the OHS inspector may enter a place under subsection (1)(a), (c), (d) or (e) only if the OHS inspector has reasonable grounds to believe there are likely to be at the place documents relating to a facility that is, or to facility operations that are, the subject of the inspection.
- ‘(3) For the purpose of asking the occupier of a place for consent to enter, an OHS inspector may, without the occupier’s consent or a warrant—
- (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
 - (b) enter part of the place the OHS inspector reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier.
- ‘(4) In this section—
- place of business* does not include a part of the place where an individual resides.

‘46 Inspector’s additional entry power for facility

‘An OHS inspector may, for the purpose of an inspection, enter a facility at any reasonable time, other than a part of the facility where an individual resides.

‘47 Inspector’s additional entry power for particular regulated business premises

- ‘(1) An OHS inspector may, for the purpose of an inspection, enter regulated business premises, other than a facility, at any reasonable time, other than a part of the premises where an individual resides.
- ‘(2) However, the OHS inspector may enter the premises only if the OHS inspector has reasonable grounds to believe there are likely to be at the premises documents relating to a facility that is, or to facility operations that are, the subject of the inspection.

‘Subdivision 2 Procedure for entry**‘48 Entry with consent**

- ‘(1) This section applies if an OHS inspector intends to ask an occupier of a place to consent to the OHS inspector entering the place under section 45(1)(a).
- ‘(2) Before asking for the consent, the OHS inspector must—
- (a) tell the occupier—
 - (i) the purpose of the entry; and
 - (ii) that the occupier is not required to consent; and
 - (b) take reasonable steps to produce, for inspection by the occupier, the OHS inspector’s identity card.
- ‘(3) The OHS inspector must, on being requested to do so by the occupier, produce each of the following for inspection by the occupier—
- (a) a copy of the Safety Authority’s written direction, if any, to conduct the inspection;

- (b) a copy of the restrictions, if any, imposed on the powers of the OHS inspector under section 43(4).
- ‘(4) If the consent is given, the OHS inspector may ask the occupier to sign an acknowledgment of the consent.
- ‘(5) The acknowledgment must state—
 - (a) the occupier has been 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 OHS inspector consent to enter the place and exercise powers under this division; and
 - (d) the time and date the consent was given.
- ‘(6) If the occupier signs an acknowledgment, the OHS inspector must immediately give a copy to the occupier.
- ‘(7) If—
 - (a) an issue arises in a proceeding about whether the occupier consented to the entry; and
 - (b) an acknowledgment complying with subsection (4) for the entry is not produced in evidence;the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

‘49 **Application for warrant**

- ‘(1) An OHS 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 OHS 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.

‘50 Issue of warrant

- ‘(1) The magistrate may issue a warrant only if the magistrate is satisfied there are reasonable grounds for suspecting there are documents at the place that relate to a facility that is, or to facility operations that are, the subject of an inspection.
- ‘(2) The warrant must state—
- (a) that a stated OHS inspector may, with necessary and reasonable help and force—
 - (i) enter the place and any other place necessary for entry; and
 - (ii) exercise the OHS inspector’s powers under this division; and
 - (b) the purposes for which the warrant is issued; and
 - (c) the hours of the day or night when the place may be entered; and
 - (d) the date, within 14 days after the warrant’s issue, the warrant ends.

‘51 Application by electronic communication and duplicate warrant

- ‘(1) An application under section 49 may be made by phone, fax, email, radio, videoconferencing or another form of electronic communication if the OHS inspector considers it necessary because of—
- (a) urgent circumstances; or
 - (b) other special circumstances, including, for example, the OHS inspector’s remote location.
- ‘(2) The application—
- (a) may not be made before the OHS inspector prepares the written application under section 49; but

- (b) may be made before the written application is sworn.
- ‘(3) The magistrate may issue the warrant (the ***original warrant***) only if the magistrate is satisfied—
 - (a) it was necessary to make the application under subsection (1); and
 - (b) the way the application was made under subsection (1) was appropriate.
- ‘(4) After the magistrate issues the original warrant—
 - (a) if there is a reasonably practicable way of immediately giving a copy of the warrant to the OHS inspector, for example, by sending a copy by fax or email, the magistrate must immediately give a copy of the warrant to the OHS inspector; or
 - (b) otherwise—
 - (i) the magistrate must tell the OHS inspector the date and time the warrant is issued and the other terms of the warrant; and
 - (ii) the OHS inspector must complete a form of warrant, including by writing on it—
 - (A) the magistrate’s name; and
 - (B) the date and time the magistrate issued the warrant; and
 - (C) the other terms of the warrant.
- ‘(5) The copy of the warrant mentioned in subsection (4)(a), or the form of warrant completed under subsection (4)(b) (in either case the ***duplicate warrant***), is a duplicate of, and as effectual as, the original warrant.
- ‘(6) The OHS inspector must, at the first reasonable opportunity, send the magistrate—
 - (a) the written application complying with section 49(2) and (3); and
 - (b) if the OHS inspector completed a form of warrant under subsection (4)(b)—the completed form of warrant.
- ‘(7) The magistrate must keep the original warrant and, on receiving the documents under subsection (6)—

- (a) attach the documents to the original warrant; and
 - (b) give the original warrant and documents to the clerk of the court of the relevant magistrates court.
- ‘(8) Despite subsection (5), if—
- (a) an issue arises in a proceeding about whether an exercise of a power was authorised by a warrant issued under this section; and
 - (b) the original warrant is not produced in evidence;
- the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a warrant authorised the exercise of the power.
- ‘(9) This section does not limit section 49.
- ‘(10) In this section—
- relevant magistrates court*, in relation to a magistrate, means the Magistrates Court that the magistrate constitutes under the *Magistrates Act 1991*.

‘52 Defect in relation to a warrant

- ‘(1) A warrant is not invalidated by a defect in the warrant, or in compliance with section 49, 50 or 51, unless the defect affects the substance of the warrant in a material particular.
- ‘(2) In this section—
- warrant* includes a duplicate warrant mentioned in section 51(5).

‘53 Warrants—procedure before entry

- ‘(1) This section applies if an OHS inspector named in a warrant issued under this division for a place is intending to enter the place under the warrant.
- ‘(2) Before entering the place, the OHS inspector must do or make a reasonable attempt to do the following things—
- (a) identify himself or herself to the occupier of the place by producing a copy of the OHS inspector’s identity card;
 - (b) give the person a copy of the warrant;

- (c) tell the person the OHS inspector is permitted by the warrant to enter the place;
 - (d) give the person an opportunity to allow the OHS inspector immediate entry to the place without using force.
- ‘(3) However, the OHS inspector need not comply with subsection (2) if the OHS inspector believes on reasonable grounds that immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated.

‘54 Entry of facility

- ‘(1) This section applies if an OHS inspector enters a facility under section 46.
- ‘(2) Immediately on entering the facility, the OHS inspector must take reasonable steps to notify the purpose of entering the facility to—
- (a) the operator’s representative at the facility; and
 - (b) if there is a health and safety representative for a designated work group having a group member likely to be affected by the matter the subject of the inspection—the representative.
- ‘(3) On being requested to do so by a person mentioned in subsection (2)(a) or (b), the OHS inspector must produce each of the following for inspection by the person—
- (a) the OHS inspector’s identity card;
 - (b) a copy of the Safety Authority’s written direction, if any, to conduct the inspection;
 - (c) a copy of the restrictions, if any, imposed on the powers of the OHS inspector under section 43(4).
- ‘(4) If there is a health and safety representative for a designated work group having a group member likely to be affected by the matter the subject of the inspection, the OHS inspector must give the health and safety representative a reasonable opportunity to consult on the matter.

‘55 Entry of particular regulated business premises

- ‘(1) This section applies if an OHS inspector enters regulated business premises, other than a facility, under section 47.
- ‘(2) Immediately on entering the premises, the OHS inspector must take reasonable steps to notify the purpose of the entry to the occupier of the premises.
- ‘(3) On being requested to do so by the occupier, the OHS inspector must produce each of the following for inspection by the occupier—
 - (a) the OHS inspector’s identity card;
 - (b) a copy of the Safety Authority’s written direction, if any, to conduct the inspection;
 - (c) a copy of the restrictions, if any, imposed on the powers of the OHS inspector under section 43(4).

‘Subdivision 3 Powers after entering a place**‘56 Application of sdiv 3**

- ‘(1) This subdivision applies if an OHS inspector has, under subdivision 2, entered a place.
- ‘(2) However, if, under section 45(3), an OHS inspector enters a place to ask the occupier’s consent to enter premises, this subdivision applies to the OHS inspector only if the consent is given or the entry is otherwise authorised.

‘57 General powers—facility

‘If the place is a facility, the OHS inspector may do all or any of the following—

- (a) search any part of the facility;
- (b) inspect, examine, take measurements of, or conduct tests concerning, a workplace at the facility or any plant, substance or thing at the facility;

- (c) take photographs of, make video recordings of, or make sketches of, a workplace at the facility or any plant, substance or thing at the facility;
- (d) inspect, take extracts from, or make copies of, any documents at the facility that the OHS inspector has reasonable grounds to believe relate, or are likely to relate, to the subject matter of the inspection;
- (e) inspect the seabed and subsoil in the vicinity of the facility.

‘58 General powers—other places

‘If the place is not a facility, the OHS inspector may search for, inspect, take extracts from, or make copies of, any documents at the premises that relate to a facility that is, or to facility operations that are, the subject of the inspection.

‘59 Obstructing or hindering OHS inspector

‘A person must not, without reasonable excuse, obstruct or hinder an OHS inspector in the exercise of the inspector’s powers under this division.

Maximum penalty—55 penalty units.

‘Subdivision 4 Other powers

‘60 Definition for sdiv 4

‘In this subdivision—

prescribed person means any of the following persons—

- (a) the operator of a facility;
- (b) the person in charge of operations at a workplace in relation to a facility;
- (c) a member of the workforce at a facility;
- (d) a person representing a person mentioned in paragraph (a) or (b).

‘61 Power to require assistance and information

- ‘(1) An OHS inspector may, to the extent it is reasonably necessary to do so in connection with the conduct of an inspection, require a prescribed person to provide the OHS inspector with reasonable assistance and facilities—
- (a) reasonably connected with the conduct of the inspection at or near the facility; or
 - (b) for the effective exercise of the OHS inspector’s powers under this schedule in connection with the conduct of the inspection at or near the facility.
- ‘(2) The reasonable assistance mentioned in subsection (1) includes, in relation to the operator of the facility—
- (a) appropriate transport to or from the facility for—
 - (i) the OHS inspector; and
 - (ii) any equipment required by the OHS inspector;
 - (iii) an article of which the OHS inspector has taken possession; and
 - (b) reasonable accommodation and means of subsistence while the OHS inspector is at the facility.
- ‘(3) A prescribed person must not fail, without reasonable excuse, to comply with a requirement under this section.
- Maximum penalty—33 penalty units or 6 months imprisonment.

‘62 Power to require the answering of questions and the production of documents or articles

- ‘(1) If an OHS inspector believes on reasonable grounds that a prescribed person is capable of answering a question that is reasonably connected with the conduct of an inspection, the OHS inspector may, to the extent it is reasonably necessary to do so in connection with the conduct of the inspection, require the person to answer the question put by the OHS inspector.
- ‘(2) If, when a requirement under subsection (1) is imposed on a person, the person is not physically present on regulated

business premises, the person is not obliged to comply with the requirement unless the requirement—

- (a) is in writing; and
 - (b) states the day on or before which the question is to be answered, being at least 14 days after the day on which the requirement is imposed; and
 - (c) is accompanied by a statement to the effect that a failure to comply with the requirement is an offence.
- ‘(3) If an OHS inspector believes on reasonable grounds that a prescribed person is capable of producing a document or article that is reasonably connected with the conduct of an inspection, the OHS inspector may, to the extent it is reasonably necessary to do so in connection with the conduct of the inspection, require the person to produce the document or article.
- ‘(4) If, when a requirement under subsection (3) is imposed on a person, the person is not physically present on regulated business premises, the person is not obliged to comply with the requirement unless the requirement—
- (a) is in writing; and
 - (b) states the day on or before which the document or article is to be produced, being at least 14 days after the day on which the requirement is imposed; and
 - (c) is accompanied by a statement to the effect that a failure to comply with the requirement is an offence.
- ‘(5) A person must not—
- (a) fail, without reasonable excuse, to comply with a requirement under this section; or
 - (b) in purported compliance with a requirement under this section, give information that is false or misleading in a material particular.

Maximum penalty—33 penalty units or 6 months imprisonment.

‘63 Privilege against self-incrimination

- ‘(1) A person is not excused from answering a question or producing a document or article when required to do so under section 62 on the ground that the answer to the question, or the production of the document or article, may tend to incriminate the person or make the person liable to a penalty.
- ‘(2) However, none of the following is admissible in evidence against the person in civil proceedings or criminal proceedings, other than proceedings for an offence against section 62—
- (a) the answer given or document or article produced; or
 - (b) answering the question or producing the document or article; or
 - (c) any information, document or thing obtained as a direct or indirect consequence of the answering of the question or the production of the document or article.

‘64 Power to take possession of plant, take samples of substances etc.

- ‘(1) In conducting an inspection, an OHS inspector may, to the extent it is reasonably necessary for the purposes of inspecting, examining, taking measurements of or conducting tests concerning, any plant, substance or thing at a facility in connection with the inspection—
- (a) take possession of the plant, substance or thing and remove it from the facility; or
 - (b) take a sample of the substance or thing and remove the sample from the facility.
- ‘(2) On taking possession of plant, a substance or a thing, or taking a sample of a substance or thing, the OHS inspector must, by notice in writing, inform the following person of the taking of possession or the taking of the sample, as the case may be, and the reasons for it—
- (a) the operator of the facility; and
 - (b) if the plant, substance or thing is used for the performance of work by an employer of a member or

- members of the workforce at the facility other than the operator of the facility—the employer; and
- (c) if the plant, substance or thing is owned by a person other than a person mentioned in paragraph (a) or (b)—the person; and
 - (d) if there is a health and safety representative for a designated work group that includes a member of the workforce who is affected by the matter to which the inspection relates—the representative.
- ‘(3) If the OHS inspector gives the notice to the operator of the facility to which the inspection relates, the operator’s representative at the facility must cause the notice to be displayed in a prominent place at the workplace from which the plant, substance or thing was removed.
- ‘(4) If the OHS inspector takes possession of plant, a substance or a thing at a workplace for the purpose of inspecting, examining, taking measurements of or conducting tests concerning, the plant, substance or thing, the OHS inspector must—
- (a) ensure the inspection, examination, measuring or testing is conducted as soon as practicable; and
 - (b) return it to the workplace as soon as practicable afterwards.
- ‘(5) As soon as practicable after completing the inspection, examination, measurement or testing, the investigator must give a written statement of the results to each person whom the investigator is required to notify under subsection (2).

‘65 Power to direct that workplace etc not be disturbed

- ‘(1) An OHS inspector may give a direction under subsection (2) if, in conducting an inspection, the OHS inspector has reasonable grounds to believe it is reasonably necessary to do so in order to—
- (a) remove an immediate threat to the health or safety of a person; or

- (b) allow the inspection, examination or taking of measurements of, or conducting of tests concerning, a facility or any plant, substance or thing at the facility.
- ‘(2) If subsection (1) applies, the OHS inspector may direct, by written notice given to the operator’s representative at the facility, that the operator must ensure a particular workplace, plant, substance or thing not be disturbed for a period stated in the direction.
- ‘(3) The period stated in the direction must be a period the OHS inspector has reasonable grounds to believe is necessary in order to remove the threat or to allow the inspection, examination, measuring or testing to take place.
- ‘(4) The direction may be renewed by another direction in the same terms.
- ‘(5) If an OHS inspector gives a notice to the operator’s representative under subsection (2), the operator’s representative must cause the notice to be displayed in a prominent place at the workplace—
 - (a) that is to be left undisturbed; or
 - (b) where the plant, substance or thing that is to be left undisturbed is located.
- ‘(6) As soon as practicable after giving the direction, the OHS inspector must take reasonable steps to notify the following persons of the direction and the reasons for giving it—
 - (a) if the workplace, plant, substance or thing to which the direction relates is owned by a person other than the operator of the facility—the person; and
 - (b) if there is a health and safety representative for a designated work group including a group member performing work at a workplace, or involving the plant, substance or thing, to which the direction relates—the representative.
- ‘(7) The operator of a facility to which a direction concerning a workplace, plant, substance or a thing relates must ensure the direction is complied with.

Maximum penalty—275 penalty units.

- ‘(8) A direction under subsection (2) must be accompanied by a statement setting out the reasons for the direction.

‘66 Power to issue prohibition notices

- ‘(1) An OHS inspector may issue a prohibition notice, in writing, to the operator of a facility if, having conducted an inspection, an OHS inspector is satisfied on reasonable grounds it is reasonably necessary to issue the notice to the operator of the facility in order to remove an immediate threat to the health or safety of a person.
- ‘(2) The notice must be issued to the operator by giving it to the operator’s representative at the facility.
- ‘(3) The notice must—
- (a) state the activity in relation to which, in the OHS inspector’s opinion, the threat to health or safety has arisen, and set out the reasons for the opinion; and
 - (b) either—
 - (i) direct the operator to ensure the activity is not engaged in; or
 - (ii) direct the operator to ensure the activity is not engaged in in a stated manner.
- ‘(4) A stated manner may relate to any 1 or more of the following—
- (a) a workplace, or part of a workplace, at which the activity is not to be engaged in;
 - (b) any plant or substance that is not to be used in connection with the activity;
 - (c) a procedure that is not to be followed in connection with the activity.
- ‘(5) The notice may state action that may be taken to satisfy an OHS inspector that adequate action has been taken to remove the threat to health and safety.
- ‘(6) The operator’s representative at the facility must—
- (a) give a copy of the notice to each health and safety representative, if any, for a designated work group

having group members performing work that is affected by the notice; and

- (b) cause a copy of the notice to be displayed at a prominent place at or near each workplace at which the work is performed.
- ‘(7) If the notice relates to any workplace, plant, substance or thing owned by a person other than the operator, the OHS inspector must, upon issuing the notice, give a copy of the notice to the person.

‘67 Compliance with prohibition notice

- ‘(1) An operator must ensure a prohibition notice issued to the operator is complied with.

Maximum penalty—275 penalty units.

- ‘(2) If an OHS inspector is satisfied action taken by the operator to remove the threat to health and safety in relation to which the notice was issued is not adequate, the OHS inspector must inform the operator accordingly.
- ‘(3) A prohibition notice ceases to have effect when an OHS inspector notifies the operator that the OHS inspector is satisfied the operator has taken adequate action to remove the threat to health or safety.
- ‘(4) In making a decision under subsection (2), an OHS inspector may exercise any of the powers of an OHS inspector conducting an inspection that the OHS inspector considers necessary for the purposes of making the decision.

‘68 Power to issue improvement notices

- ‘(1) An OHS inspector may issue an improvement notice, in writing, to a person (a *responsible person*) if, in conducting an inspection, the OHS inspector believes on reasonable grounds that the responsible person—
- (a) is contravening a provision of a listed OHS law; or
 - (b) has contravened a provision of a listed OHS law and is likely to contravene that provision again.

- '(2) If the responsible person is the operator, the improvement notice may be issued to the operator by giving it to the operator's representative at the facility.
- '(3) If the responsible person is an employer, other than the operator, of members of the workforce, but it is not practicable to give the notice to the employer—
 - (a) the improvement notice may be issued to the employer by giving it to the operator's representative at the facility; and
 - (b) if the notice is issued to the operator's representative at the facility—the operator must ensure a copy of the notice is given to the employer as soon as practicable afterwards.
- '(4) The notice—
 - (a) must state the contravention the OHS inspector believes is occurring or is likely to occur, and the reasons for the belief; and
 - (b) must state a reasonable period within which the responsible person is to take the action necessary to prevent any further contravention or to prevent the likely contravention, as the case may be; and
 - (c) may state action the responsible person is to take during the period stated in the notice.
- '(5) If the OHS inspector believes on reasonable grounds it is appropriate to do so, the OHS inspector may, in writing and before the end of the period, extend the period stated in the notice.
- '(6) If an improvement notice is issued to an employer, other than the operator, of members of the workforce in circumstances other than the circumstance mentioned in subsection (3), the employer must immediately ensure a copy of the notice is given to the operator's representative at the facility.
- '(7) If a notice is issued to the operator or an employer, other than the operator, of members of the workforce, the operator's representative at the facility must—
 - (a) give a copy of the notice to each health and safety representative for a designated work group having group

- members performing work that is affected by the notice;
and
- (b) cause a copy of the notice to be displayed in a prominent place at or near each workplace at which the work is being performed.
- ‘(8) On issuing a notice, the OHS inspector must give a copy of the notice to—
- (a) if the notice is given to a member of the workforce who is an employee and the notice relates to work performed by the employee—the employer of the employee; and
- (b) if the notice relates to any workplace, plant, substance or thing owned by a person other than a responsible person or an employer mentioned in paragraph (a)—the owner; and
- (c) if the notice is issued to a person who owns any workplace, plant, substance or thing, because of which a contravention of a listed OHS law has occurred or is likely to occur—
- (i) the operator of the facility; and
- (ii) if the employer of employees who work in the workplace or who use the plant, substance or thing is a person other than the operator—the employer.

‘69 **Compliance with improvement notice**

‘A person to whom an improvement notice is issued must comply with the notice to the extent that the notice relates to a matter over which the person has control.

Maximum penalty—110 penalty units.

‘70 **Notices not to be tampered with or removed**

- ‘(1) A person must not, without reasonable excuse, tamper with a notice displayed under section 64(3), 65(5), 66(6) or 68(7).

Maximum penalty—110 penalty units.

- ‘(2) If a notice is displayed under section 64(3), a person must not, without reasonable excuse, remove the notice until the plant

or thing to which the notice relates is returned to the workplace from which it was removed.

Maximum penalty—110 penalty units.

- ‘(3) If a notice is displayed under section 65(5), 66(6) or 68(7), a person must not, without reasonable excuse, remove the notice before it has ceased to have effect.

Maximum penalty—110 penalty units.

‘Division 4 Reports on inspections

‘71 Reports on inspections

- ‘(1) If an OHS inspector has conducted an inspection, the OHS inspector must, as soon as practicable, prepare a written report relating to the inspection and give the report to the Safety Authority.
- ‘(2) The report must include—
- (a) the OHS inspector’s conclusions from conducting the inspection and the reasons for those conclusions; and
 - (b) any recommendations that the OHS inspector wishes to make arising from the inspection; and
 - (c) any other prescribed matters.
- ‘(3) As soon as practicable after receiving the report, the Safety Authority must give a copy of the report, with any written comments that it wishes to make, to each of the following persons—
- (a) the operator of the facility to which the report relates;
 - (b) if the report relates to activities performed by an employee of another person—the other person;
 - (c) if the report relates to any plant, substance or thing owned by another person—the other person.
- ‘(4) The Safety Authority may, in writing, request the operator or another person to whom the report is given to provide to the Safety Authority, within a reasonable period stated in the request, details of—

- (a) any action proposed to be taken as a result of the conclusions or recommendations contained in the report; and
 - (b) if a notice has been issued under section 66 or 68 in relation to work being performed for the operator or the other person—any action taken, or proposed to be taken, in relation to the notice.
- ‘(5) The operator or other person must comply with the request.
Maximum penalty—110 penalty units.
- ‘(6) As soon as practicable after receiving a report, the operator of a facility must give a copy of the report, together with any written comment made by the Safety Authority on the report—
- (a) if there is a least 1 health and safety committee in relation to some or all of the members of the workforce—to each health and safety committee; and
 - (b) if there is no health and safety committee in relation to some or all of the members of the workforce, but some or all of those members, in relation to which there is no such committee, are in at least 1 designated work group for which there is a health and safety representative—to each health and safety representative.
- Maximum penalty—110 penalty units.

‘Division 5 Appeals

‘72 Appeals

- ‘(1) Subsections (2) and (3) apply if an OHS inspector, in conducting an inspection or having conducted an inspection—
- (a) decides, under section 36, to confirm or vary a provisional improvement notice; or
 - (b) decides, under section 64, to take possession of plant, a substance or a thing at a workplace; or

- (c) decides, under section 65, to direct that a workplace, a part of a workplace, plant, a substance or a thing not be disturbed; or
 - (d) decides, under section 66, to issue a prohibition notice; or
 - (e) decides, under section 67, that the operator of a facility to whom a prohibition notice has been issued has not taken adequate action to remove the threat to health and safety that caused the notice to be issued; or
 - (f) decides, under section 68, to issue an improvement notice.
- ‘(2) A person mentioned in subsection (3) may appeal to the reviewing authority against the decision, by giving notice in writing to the reviewing authority.
- ‘(3) The following persons may appeal, as applicable—
- (a) the operator of the facility or an employer, other than the operator, who is affected by the decision; or
 - (b) a person to whom a notice has been issued under section 35(3) or 68(1); or
 - (c) the health and safety representative for a designated work group having a group member affected by the decision; or
 - (d) a workforce representative in relation to the designated work group including a group member who is affected by the decision and who has requested the workforce representative to make the appeal; or
 - (e) if there is no designated work group, and a member of the workforce affected by the decision has requested a workforce representative in relation to the member to make the appeal—the workforce representative; or
 - (f) a person who owns any workplace, plant, substance or thing to which a decision mentioned in subsection (1)(a), (b), (c) or (f) relates.
- ‘(4) Subsection (5) applies if an OHS inspector, having conducted an inspection—

- (a) decides under section 36 to cancel a provisional improvement notice; or
 - (b) decides under section 67 that the operator of a facility to whom a prohibition notice has been issued has taken adequate action to remove the threat to health and safety that caused the notice to be issued.
- ‘(5) A following person may appeal to the reviewing authority against the decision, by giving notice in writing to the reviewing authority—
- (a) the health and safety representative for a designated work group having a group member affected by the decision; or
 - (b) a workforce representative in relation to the designated work group that includes a group member who is affected by the decision and who has requested the workforce representative to make the appeal; or
 - (c) if there is no designated work group, and a member of the workforce affected by the decision has requested a workforce representative in relation to the member to make the appeal—that workforce representative.
- ‘(6) Subject to this section, giving notice of an appeal does not affect the operation of the decision appealed against or prevent the taking of action to implement that decision, except to the extent the reviewing authority makes an order to the contrary.
- ‘(7) If the decision appealed against is a decision under section 68 to issue an improvement notice, the operation of the decision is suspended pending determination of the appeal, except to the extent the reviewing authority makes an order to the contrary.
- ‘(8) If the decision appealed against is a decision of an OHS inspector under section 36 to confirm or vary a provisional improvement notice whose operation has been suspended pending the inspection of the matter to which the notice relates, the operation of the notice is further suspended pending determination of the appeal, except to the extent the reviewing authority makes an order to the contrary.

‘73 Powers of reviewing authority on appeal

- ‘(1) On an appeal, the reviewing authority may—
- (a) affirm, vary or revoke the decision appealed against; and
 - (b) if it revokes the decision—substitute another decision of the kind appealed against that the reviewing authority thinks appropriate.
- ‘(2) If the decision is varied or revoked or revoked with the substitution of another decision, the decision is taken to have effect, and always to have had effect, accordingly.
- ‘(3) If the decision appealed against is a decision under section 64 to take possession of plant, a substance or a thing at a workplace and the decision is not affirmed, the OHS inspector who made the decision must ensure, to the extent the decision is not affirmed, the plant, substance or thing is returned to the workplace as soon as practicable.

‘Part 5 General**‘74 Notifying and reporting accidents and dangerous occurrences**

- ‘(1) This section applies if, at or near a facility, there is—
- (a) an accident causing the death of, or serious personal injury to, any person; or
 - (b) an accident causing a member of the workforce to be incapacitated from performing work for a period prescribed for the purposes of this paragraph; or
 - (c) a dangerous occurrence.
- ‘(2) The operator must, under the regulations, give the Safety Authority notice of, and a report about, the accident or dangerous occurrence.
- ‘(3) A regulation made for the purposes of subsection (2) may prescribe—

- (a) the time within which, and the manner in which, notice of an accident or dangerous occurrence is to be given, and the form of the notice; and
 - (b) the time within which, and the manner in which, a report of an accident or dangerous occurrence is to be given, and the form of the report.
- ‘(4) Subsection (3) does not limit regulations that may be made for the purposes of subsection (2).

‘75 Records of accidents and dangerous occurrences to be kept

- ‘(1) The operator of a facility must maintain, under the regulations, a record of each accident or dangerous occurrence in relation to which the operator is required under section 74 to notify the Safety Authority.
- ‘(2) A regulation made for the purposes of subsection (1) may prescribe—
- (a) the nature of the contents of a record maintained under this section; and
 - (b) the period for which the record must be retained.
- ‘(3) Subsection (2) does not limit regulations that may be made for the purposes of subsection (1).

‘76 Codes of practice

- ‘(1) The regulations may prescribe codes of practice for the purpose of providing practical guidance to operators of facilities and employers, other than operators, of members of the workforce at facilities.
- ‘(2) A person is not liable to any civil or criminal proceedings for contravening a code of practice.

‘77 Use of codes of practice in proceedings

- ‘(1) This section applies if, in proceedings for an offence against a listed OHS law, it is alleged that a person contravened a

provision of a listed OHS law in relation to which a code of practice was in effect at the time of the alleged contravention.

- ‘(2) The code of practice is admissible in evidence in those proceedings.
- ‘(3) In relation to a matter the prosecution must prove in order to establish the alleged contravention, the matter is treated as proved if the court is satisfied that—
 - (a) a provision of the code of practice is relevant to the matter; and
 - (b) the person failed at a material time to comply with the provision of the code of practice.
- ‘(4) Subsection (3) does not apply if the court is satisfied that in relation to the matter the person complied with the provision of a listed OHS law otherwise than by complying with the code of practice.

‘78 Interference with equipment etc

‘A person must not, without reasonable excuse, do anything resulting in the interference with, or the rendering ineffective of, protective equipment or a safety device provided for the occupational health and safety or welfare of members of the workforce at a facility if the person knew, or ought reasonably to have known, that the equipment or device was protective equipment or a safety device.

Maximum penalty—33 penalty units or 6 months imprisonment.

‘79 Members of workforce not to be levied

‘The operator of a facility or an employer, other than the operator, of members of the workforce at a facility must not levy, or permit to be levied, on a member of the workforce a charge in relation to anything done or provided in accordance with a listed OHS law in order to ensure the occupational health and safety or welfare of persons at or near the facility.

Maximum penalty—275 penalty units.

‘80 Victimisation

- ‘(1) An employer, whether the operator of a facility or another person, must not do anything mentioned in subsection (2) in relation to an employee because the employee—
- (a) has complained or proposes to complain about a matter concerning the health, safety or welfare of employees at work; or
 - (b) has assisted or proposes to assist, by giving information or otherwise, the conduct of an inspection; or
 - (c) has ceased, or proposes to cease, to perform work, in accordance with a direction by a health and safety representative under section 41(2)(b) or (5)(a), and the cessation or proposed cessation does not continue after—
 - (i) the health and safety representative has agreed with a person supervising the work that the cessation or proposed cessation was not, or is no longer, necessary; or
 - (ii) an OHS inspector has, under section 41(8), made a decision to the effect that the employee should perform the work.

Maximum penalty—275 penalty units.

- ‘(2) For subsection (1), the things are—
- (a) dismiss the employee; or
 - (b) perform an act resulting in injury to the employee in the employee’s employment; or
 - (c) perform an act that prejudicially alters the employee’s position, whether by deducting or withholding remuneration or by another means; or
 - (d) threaten to do something mentioned in paragraphs (a) to (c).
- ‘(3) In proceedings for an offence against subsection (1), if all the relevant facts and circumstances, other than the reason for an action alleged in the charge, are proved, the defendant has the onus of establishing that the action was not taken for that reason.

‘81 Institution of prosecutions

- ‘(1) Proceedings for an offence against a listed OHS law may be instituted by the Safety Authority or by an OHS inspector.
- ‘(2) A health and safety representative for a designated work group may request the Safety Authority to institute proceedings for an offence against a listed OHS law in relation to the occurrence of an act or omission if—
 - (a) a period of 6 months has elapsed since the act or omission occurred; and
 - (b) the health and safety representative considers the occurrence of the act or omission constitutes an offence against a listed OHS law; and
 - (c) proceedings in relation to the offence have not been instituted.
- ‘(3) A workforce representative in relation to a designated work group may request the Safety Authority to institute proceedings for an offence against a listed OHS law in relation to the occurrence of an act or omission if—
 - (a) a period of 6 months has elapsed since the act or omission occurred; and
 - (b) the workforce representative considers the occurrence of the act or omission constitutes an offence against a listed OHS law; and
 - (c) proceedings in relation to the offence have not been instituted; and
 - (d) a group member included in the group requests the workforce representative to request the Safety Authority to institute the proceedings.
- ‘(4) A request under subsection (2) or (3) must be in writing.
- ‘(5) The Safety Authority must, within 3 months after receiving the request, advise the health and safety representative or the workforce representative, as the case may be, whether proceedings under subsection (1) have been or will be instituted, and, if not, give reasons why not.

‘82 Role of Commonwealth DPP

‘The Commonwealth Director of Public Prosecutions has the same functions and powers in relation to an offence against a listed OHS law as he or she would have if the offence were an offence against a law of the Commonwealth, including the power to institute and carry on an appeal arising out of a prosecution for that offence.

‘83 Conduct of directors, employees and agents

- ‘(1) This section has effect for a proceeding for an offence against a listed OHS law.
- ‘(2) If it is necessary to establish the state of mind of a corporation in relation to particular conduct, it is sufficient to show—
- (a) that the conduct was engaged in by a director, employee or agent of the corporation within the scope of actual or apparent authority; and
 - (b) that the director, employee or agent had the state of mind.
- ‘(3) Conduct engaged in on behalf of a corporation by a director, employee or agent of the corporation within the scope of actual or apparent authority is taken to have been engaged in also by the corporation unless it establishes that it took reasonable precautions and exercised due diligence to avoid the conduct.
- ‘(4) If it is necessary to establish the state of mind of an individual in relation to particular conduct, it is sufficient to show—
- (a) that the conduct was engaged in by an employee or agent of the individual within the scope of actual or apparent authority; and
 - (b) that the employee or agent had the state of mind.
- ‘(5) Conduct engaged in on behalf of an individual by an employee or agent of the individual within the scope of actual or apparent authority is taken to have been engaged in also by the individual unless the individual establishes that he or she took reasonable precautions and exercised due diligence to avoid the conduct.

- ‘(6) If an individual is found guilty of an offence and the individual would not have been found guilty of the offence if subsections (4) and (5) did not apply, the individual is not liable to be punished by imprisonment for the offence.
- ‘(7) A reference in subsection (2) or (4) to the state of mind of a person includes a reference to—
- (a) the person’s knowledge, intention, opinion, belief or purpose; and
 - (b) the person’s reasons for the intention, opinion, belief or purpose.

‘84 Act not to give rise to other liabilities etc

‘This schedule does not—

- (a) confer a right of action in any civil proceeding in relation to a contravention of a provision of a listed OHS law; or
- (b) confer a defence to an action in any civil proceeding or otherwise affect a right of action in any civil proceeding.

‘85 Circumstances preventing compliance may be defence to prosecution

- ‘(1) It is a defence to a prosecution for refusing or failing to do anything required by a listed OHS law if the defendant proves it was not practicable to do the thing because of an unforeseen and uncontrollable event prevailing at the relevant time.
- ‘(2) This section does not limit chapter 5⁵ of the Criminal Code.

‘86 Approval of forms

‘The Minister may approve forms for this schedule.

‘87 Regulation making power—sch 3 generally

‘Regulations may prescribe—

5 Chapter 5 (Criminal responsibility) of the Criminal Code

- (a) procedures for the selection of persons, under section 38, as members of health and safety committees, to represent the interests of members of the workforce at a facility; and
- (b) procedures to be followed at meetings of health and safety committees; and
- (c) the manner in which notices are to be served under this schedule or the regulations.’.

Schedule Minor amendments

section 3

- 1 Penalties for sections 19, 39, 60, 72(2) and 74(1),
 ‘\$50 000’—**
omit, insert—
 ‘670 penalty units’.
- 2 Penalties for sections 34, 35, 82(1), 96, 97, 98, 100, 101(7),
 107, 111(9), 112(10), 117, 120, 121, 122, and 124,
 ‘\$10 000’—**
omit, insert—
 ‘135 penalty units’.
- 3 Penalties for sections 84, 85, 90, 112(11) and 126,
 ‘\$5 000’—**
omit, insert—
 ‘70 penalty units’.
- 4 Section 119(3), from ‘penalty’—**
omit, insert—
 ‘maximum penalty of 1 300 penalty units or 10 years
 imprisonment.’.
- 5 Section 125, penalty, ‘\$500’—**
omit, insert—
 ‘10 penalty units’.

Schedule (continued)

6 Section 133(4)(b)—*omit, insert—*

- ‘(b) the maximum penalty that a court of summary jurisdiction may impose in relation to an offence for which the person charged is dealt with summarily under this subsection is 135 penalty units or 2 years imprisonment.’.