

(Reprint No. 1)

SOUTH AUSTRALIA

OCCUPATIONAL HEALTH, SAFETY AND WELFARE ACT, 1986

This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 4 February 1991.

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

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OCCUPATIONAL HEALTH, SAFETY AND WELFARE ACT, 1986

being

Occupational Health, Safety and Welfare Act, 1986, No. 125 of 1986 [Assented to 24 December 1986]¹

as amended by

Occupational Health, Safety and Welfare Act Amendment Act, 1989, No. 24 of 1989 [Assented to 27 April 1989]²

Occupational Health, Safety and Welfare Act Amendment Act, 1990, No. 67 of 1990 [Assented to 20 December 1990]³

Note: Asterisks indicate repeal or deletion of text. For further explanation see Appendix.

An Act to provide for the health, safety and welfare of persons at work; to establish the South Australian Occupational Health and Safety Commission; to repeal the Industrial Safety, Health and Welfare Act, 1972; to make related amendments to the Industrial Conciliation and Arbitration Act, 1972, and the Mines and Works Inspection Act, 1920; and for other purposes.

The Parliament of South Australia enacts as follows:

PART I

PRELIMINARY

Short title

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

Commencement

2. (1) This Act shall come into operation on a day to be fixed by proclamation.

(2) The Governor may, in a proclamation fixing a day for this Act to come into operation, suspend the operation of specified provisions of this Act until a subsequent day fixed in the proclamation, or a day to be fixed by subsequent proclamation.

Objects of Act

3. The chief objects of this Act are—

(a) to secure the health, safety and welfare of persons at work;

(b) to eliminate, at their source, risks to the health, safety and welfare of persons at work;

¹Came into operation (except ss. 3-6, 19-71, Schedules 1, 2 and 3) 16 April 1987: *Gaz.* 2 April 1987, p. 806; remainder of Act came into operation 30 November 1987: *Gaz.* 8 October 1987, p. 1068.

²Came into operation (except ss. 9 and 11) 22 June 1989: *Gaz.* 22 June 1989, p. 1709; remainder of Act came into operation 1 July 1990: *Gaz.* 24 May 1990, p. 1404.

³Came into operation 1 January 1991: *Gaz.* 20 December 1990, p. 1842.

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

Interpretation

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

“accident” means an unplanned occurrence or incident that causes or contributes to personal injury or damage to property:

“approved code of practice” means a code of practice approved by the Minister pursuant to section 63:

“business day” in relation to a particular workplace means any day on which work is normally carried out at the workplace:

“the Chief Inspector” means—

- (a) in relation to mines to which the *Mines and Works Inspection Act, 1920*, applies—the Chief Inspector of Mines;

- (b) in relation to operations to which the *Petroleum Act, 1940*, or the *Petroleum (Submerged Lands) Act, 1982*, applies—the Director-General of Mines and Energy;

- (c) in any other case—a public service employee authorized by the Minister to exercise the powers of Chief Inspector of Occupational Health and Safety under this Act:

“the Commission” means the South Australian Occupational Health and Safety Commission established under Part II:

“contract of service” means—

- (a) a contract under which one person is employed by another;

- (b) a contract of apprenticeship;

- (c) a contract, arrangement or understanding under which a person receives on-the-job training in a trade or vocation from another:

“employee” means a person who is employed under a contract of service or who works under a contract of service:

“employer” means a person by whom an employee is employed under a contract of service or for whom work is done by an employee under a contract of service:

“health and safety committee” means a health and safety committee established under Part IV:

“health and safety representative” means a health and safety representative elected in accordance with Part IV:

“the Industrial Commission” means the Industrial Commission of South Australia:

“the Industrial Court” means the Industrial Court of South Australia:

“inspector” means—

- (a) in relation to mines to which the *Mines and Works Inspection Act, 1920*, applies—an inspector of mines under that Act;
- (b) in relation to operations to which the *Petroleum Act, 1940*, applies—an inspector under that Act;
- (c) in relation to operations to which the *Petroleum (Submerged Lands) Act, 1982*, applies—an inspector under that Act;
- (d) in any other case—a public service employee authorized by the Minister to exercise the powers of an inspector under this Act:

“metropolitan area” means the area comprised by—

- (a) Metropolitan Adelaide as defined in the Development Plan compiled under the *Planning Act, 1982*;

and

- (b) the City of Adelaide and the Municipality of Gawler:

“occupier” in relation to a place means a person who has the management or control of the place:

“officer” in relation to a body corporate means—

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

“plant” includes—

- (a) any machinery, equipment, appliance, implement or tool;
- (b) any component, fitting or accessory used in or in conjunction with any machinery, equipment, appliance, implement or tool:

“registered association” means—

- (a) an association registered under Part IX of the *Industrial Conciliation and Arbitration Act, 1972*;
- (b) an association registered under the *Conciliation and Arbitration Act 1904* of the Commonwealth;

or

- (c) the United Trades and Labor Council of South Australia:

“review committee” means a review committee constituted under Part VII:

“safe” connotes safe from injury and risks to health:

“ship” includes a boat, vessel or craft:

“South Australian ship” means a ship—

- (a) that is registered in the State;
- (b) that is owned or under charter by the Crown;

or

(c) that is owned or under charter by a body corporate or other person—

(i) whose principal office or place of business is in the State;

or

(ii) whose principal office or place of business with respect to the control or management of the ship is in the State:

“substance” means any natural or artificial substance, whether in solid, liquid or gaseous form:

“work group” means a group of employees constituted as a work group for the purposes of Part IV:

“work-related injury” means—

(a) an injury, disease or disability;

(b) the loss or destruction of, or damage to, an artificial limb or other prosthesis or a medical or surgical aid or appliance;

or

(c) any death,

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

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

(2) For the purposes of this Act, where a person (“the contractor”) is engaged to perform work for another person (“the principal”) in the course of a trade or business carried on by the principal, the contractor, and any person employed or engaged by the contractor to carry out or to assist in carrying out the work, shall be deemed to be employed by the principal but the principal’s duties under this Act in relation to them extend only to matters over which the principal has control or would have control but for some agreement to the contrary between the principal and the contractor.

(3) For the purposes of this Act, where a person, in connection with a trade or business carried on by the employer, performs work for an employer gratuitously, the person shall be deemed to be employed by the employer.

(4) The following matters are aspects of occupational health, safety and welfare:

(a) the general well-being of employees while at work;

(b) the prevention of work-related injuries and work-related fatalities;

(c) the investigation of the causes of work-related injuries and work-related fatalities;

(d) the rehabilitation and retraining of people who have suffered work-related injuries.

(5) For the purposes of this Act—

“Division 1 fine” means a fine not exceeding \$100 000:

“Division 2 fine” means a fine not exceeding \$50 000:

“Division 3 fine” means a fine not exceeding \$20 000:

“Division 4 fine” means a fine not exceeding \$15 000:

“Division 5 fine” means a fine not exceeding \$10 000:

“Division 6 fine” means a fine not exceeding \$5 000:

“Division 7 fine” means a fine not exceeding \$1 000.

Application of Act

5. (1) This Act or specified provisions of this Act do not apply in relation to—

(a) work or classes of work;

or

(b) employees or classes of employees,

excluded by regulation from the application of this Act or specified provisions of this Act.

(2) Subject to any regulations made for the purposes of subsection (1), this Act applies in relation to work on a South Australian ship whether or not the ship is within the coastal waters of the State.

(3) This Act binds the Crown in right of the State and also, so far as the legislative power of the State extends, in all its other capacities.

Non-derogation

6. (1) The provisions of this Act are in addition to and do not derogate from the provisions of any other Act.

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

PART II

ADMINISTRATION

DIVISION I—THE SOUTH AUSTRALIAN OCCUPATIONAL HEALTH AND SAFETY COMMISSION

Establishment of Commission

7. (1) There shall be a commission entitled the "South Australian Occupational Health and Safety Commission".

(2) The Commission—

- (a) shall be a body corporate with perpetual succession and a common seal;
 - (b) shall be capable in its corporate name of acquiring, holding, dealing with and disposing of real and personal property;
 - (c) shall be capable of acquiring or incurring any other rights or liabilities, and of suing and being sued;
 - (d) shall hold its property on behalf of the Crown;
- and
- (e) shall have the functions, powers, authorities and duties prescribed by or under this or any other Act.

(3) An apparently genuine document purporting to bear the common seal of the Commission shall, in the absence of proof to the contrary, be deemed to have been duly executed by the Commission.

Membership of the Commission

8. (1) The Commission will consist of 15 members, appointed by the Governor, of whom—

- (a) one, who will be the presiding officer of the Commission, will be a person nominated by the Minister after consultation with employer associations and the United Trades and Labor Council;
- (b) one will be the Director of the Department of Labour;
- (c) one will be the Chairman of the South Australian Health Commission or a person who is experienced in occupational health and one or more areas of public and environmental health, nominated by the Chairman of the South Australian Health Commission with the concurrence of the Minister;
- (d) five will be nominated by the Minister after taking into account the recommendations of employer associations, to represent the interests of employers;
- (e) five will be nominated by the Minister after taking into account the recommendations of the United Trades and Labor Council, to represent the interests of employees;
- (f) one will be the General Manager of the Workers Rehabilitation and Compensation Corporation or a person nominated by the General Manager of the Workers Rehabilitation and Compensation Corporation with the concurrence of the Minister;

and

- (g) one will be a person who is experienced in the field of occupational health, safety and welfare, nominated by the Minister after consultation with employer associations and the United Trades and Labor Council.
- (2) In making nominations under subsection (1), the Minister shall have regard to—
- (a) the need for the Commission to consist of members who have knowledge of and experience in occupational health, safety and welfare;
- (b) the need for the Commission to take into account in the performance of its functions cultural and other diversity in the population of the State;
- and
- (c) the desirability of having reasonable representation of both men and women in the membership of the Commission.

* * * * *

Terms and conditions of office

9. (1) A member of the Commission will be appointed on such conditions and for such term, not exceeding three years, as the Governor may determine and on the expiration of a term of office will be eligible for re-appointment.

(2) The Governor may appoint a suitable person to be a deputy of a member of the Commission and that person may, in the absence of that member from the duties of office, act as a member of the Commission.

(3) The provisions of this Act relating to nomination and consultation before the appointment of a member of the Commission extend to the appointment of a deputy of that member.

(4) The Governor may remove a member of the Commission from office if the member—

- (a) contravenes, or does not comply with, a condition of appointment;
- (b) becomes mentally or physically incapable of carrying out satisfactorily the duties of office;
- (c) is guilty of neglect of duty or dishonourable conduct;
- or
- (d) having been appointed to represent the interests of employers or employees, ceases, in the opinion of the Governor, to be a suitable person to act as such a representative.

(5) The office of a member of the Commission becomes vacant if the member—

- (a) dies;
- (b) completes a term of office and is not re-appointed;
- (c) resigns by written notice addressed to the Minister;
- or
- (d) is removed from office by the Governor pursuant to subsection (4).

(6) On the office of a member of the Commission becoming vacant, a person shall be appointed in accordance with this Act to the vacant office.

* * * * *

Remuneration and expenses

10. The members of the Commission are entitled to such fees, allowances and expenses as the Governor may approve.

Proceedings of the Commission

11. (1) Eight members of the Commission, of whom—

* * * * *

(b) at least two are members appointed to represent the interests of employers;

and

(c) at least two are members appointed to represent the interests of employees,

constitute a quorum of the Commission.

(1a) In the absence of the presiding officer of the Commission, the members present at a meeting of the Commission will decide who is to preside.

(2) A decision carried by a majority of the votes of the members of the Commission present at a meeting of the Commission is a decision of the Commission.

(3) Each member of the Commission present at a meeting of the Commission is entitled to one vote on a matter arising for decision by the Commission, and the person presiding at the meeting has, in the event of an equality of votes, a second or casting vote.

(4) The Commission shall cause an accurate record to be kept of its proceedings.

(5) Subject to this Act, the proceedings of the Commission shall be conducted in such manner as the Commission may determine.

Validity of acts of Commission and immunity of members

12. (1) An act or proceeding of the Commission is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

(2) No personal liability attaches to a member of the Commission for an act or omission by the member or the Commission in good faith in the exercise or discharge, or purported exercise or discharge, of the member's or the Commission's powers, duties or functions under this Act.

(3) A liability that would, but for subsection (2), lie against a member of the Commission shall lie against the Crown.

Disclosure of interest

13. (1) A member of the Commission who has a pecuniary or other personal interest in a matter that is before the Commission—

(a) shall, as soon as practicable after becoming aware of the interest, disclose the nature of the interest to the Commission;

and

(b) shall not take part in any deliberations or decisions of the Commission in relation to that matter.

(2) A disclosure under subsection (1) shall be recorded in the minutes.

DIVISION II—FUNCTIONS AND POWERS OF THE COMMISSION

Functions and powers of the Commission

14. (1) The functions of the Commission are—

- (a) to formulate and promote policies and strategies for the improvement of occupational health, safety and welfare;
- (b) to promote awareness of the value of effective occupational health, safety and welfare programmes;
- (c) to report to the Minister, on its own initiative or when requested to do so by the Minister, on any matter relating to occupational health, safety or welfare;
- (d) to make recommendations to the Minister with respect to—
 - (i) the administration of this Act and any other legislation relating to occupational health, safety or welfare;
 - (ii) regulations proposed by the Commission or the Minister;
- (e) to prepare codes of practice relating to occupational health, safety or welfare, to keep those codes of practice under review and, where appropriate, to make recommendations in relation to their revision;
- (f) to keep under review the enforcement of occupational health, safety or welfare regulations and standards (whether under this Act or any other Act) and to make recommendations to responsible Ministers in relation to the work of persons who enforce those regulations and standards;
- (g) to keep under review the role of health and safety representatives under this Act and to make recommendations in relation to the functions of health and safety representatives;
- (h) to examine, review and make recommendations in relation to existing or proposed occupational health, safety or welfare services;
- (i) to promote the adoption of practices, procedures and arrangements in the workplace that enhance occupational health, safety and welfare;
- (j) to promote education in the field of occupational health, safety and welfare;
- (k) to devise, promote or approve courses of training in occupational health, safety or welfare and to co-operate with educational authorities in the provision of courses of training;
- (l) to disseminate information and statistics on occupational health, safety and welfare;
- (m) to promote or, with the approval of the Minister, conduct inquiries and public meetings and discussions relating to occupational health, safety or welfare;
- (n) to carry out, establish, commission or sponsor research, studies and surveys and publish for discussion and comment submissions or proposals relating to occupational health, safety or welfare;
- (o) to carry out any other function or duty assigned to the Commission by or under this Act.

(2) The Commission must when preparing or reviewing codes of practice or occupational health, safety or welfare regulations or standards take into account the provisions of the *Equal Opportunity Act, 1984*.

(3) The Commission should, so far as reasonably practicable, consult and co-operate with government authorities, institutions, registered associations and other persons and bodies in relation to occupational health, safety and welfare.

(4) The Commission should, so far as reasonably practicable—

(a) consult with the National Occupational Health and Safety Commission in relation to matters of common interest;

(b) take into account research, studies and surveys undertaken or promoted by the National Occupational Health and Safety Commission;

and

(c) take into account, in the formulation of codes of practice under this Act, occupational health and safety policies and codes of practice developed or adopted by the National Occupational Health and Safety Commission.

(5) Before the Commission recommends the making of a regulation or issues a code of practice, the proposed regulation or code of practice must be made available for public comment.

(6) The Commission may establish such committees and sub-committees as it thinks fit (which may, but need not consist of, or include, members of the Commission) to advise it on any aspect of its functions under this Act.

(7) The Minister may direct the Commission to establish a committee or working party—

(a) to investigate and report on any matter affecting occupational health, safety or welfare;

or

(b) to act in relation to any prescribed matter affecting occupational health, safety or welfare.

(8) Where the Minister receives a recommendation from the Commission under subsection (1), the Minister shall, within 60 days of its receipt, reply to the Commission indicating agreement or disagreement with that recommendation.

(9) The Commission may, with the approval of the Minister—

(a) perform any function conferred on the Commission by or under a law of the Commonwealth, another State or a Territory;

(b) confer (subject to conditions or limitations (if any) specified by the Minister) any function of the Commission on the National Occupational Health and Safety Commission.

(10) The Commission shall prepare and publish guidelines to assist people who are subject to the operation of this Act and in particular guidelines relating to—

(a) the responsibilities of employers, employees, occupiers of workplaces and manufacturers under this Act;

(b) the formation of work groups;

(c) the establishing of health and safety committees;

(d) the procedures and functions of health and safety committees;

and

(e) the resolution of health, safety or welfare issues.

(11) The Commission may engage experts to assist in the performance of its functions or to advise it in relation to any technical matter.

Commission to have regard to various differences in the workforce

15. (1) The Commission shall, in the performance of its functions under this Act, take into account—

(a) racial, ethnic and linguistic diversity in the population of the State;

(b) the interests of both sexes;

and

(c) the interests of those who may be physically, mentally or intellectually impaired,

and shall seek to ensure that the benefits of this Act are available to persons irrespective of their racial, ethnic or linguistic origins or background, their sex or any physical, mental or intellectual impairment.

(2) The Commission should, so far as reasonably practicable, ensure that any guideline or information provided for the use in the workplace is in such languages and form as are appropriate for those expected to make use of it.

Delegation

16. (1) The Commission may, by instrument in writing, delegate any of its functions or powers.

(2) A delegation under this section—

(a) may be made subject to such conditions as the Commission thinks fit;

(b) is revocable at will;

and

(c) does not derogate from the power of the Commission to act in any matter itself.

(3) In any legal proceedings an apparently genuine certificate, purporting to be signed by a member of the Commission, containing particulars of a delegation under this section shall, in the absence of proof to the contrary, be accepted as proof of the particulars.

Commission to be subject to control of Minister

17. The Commission is subject to the general control and direction of the Minister.

DIVISION III—STAFF OF THE COMMISSION AND USE OF FACILITIES

Chief Executive Officer of the Commission

17a. (1) There will be a Chief Executive Officer of the Commission.

(2) The Chief Executive Officer will be responsible to the Commission for the efficient management of the Commission's activities and the supervision of its staff.

(3) A person will not be appointed as Chief Executive Officer of the Commission unless the Commission has first consulted with the Minister in relation to the proposed appointment and the proposed terms and conditions of appointment.

Other staff of the Commission

18. (1) The Commission shall have such other staff (comprised of persons employed in the Public Service of the State) as is necessary for the purposes of this Act.

(2) One member of the staff of the Commission may be appointed as Deputy Chief Executive Officer of the Commission.

* * * * *

(4) The Commission may, by arrangement with the appropriate authority, make use of the services, facilities or employees of a government department, agency or instrumentality.

PART III

GENERAL PROVISIONS RELATING TO OCCUPATIONAL HEALTH, SAFETY
AND WELFARE**Duties of employers**

19. (1) An employer shall, in respect of each employee employed or engaged by the employer, ensure so far as is reasonably practicable that the employee is, while at work, safe from injury and risks to health and, in particular—

(a) shall provide and maintain so far as is reasonably practicable—

- (i) a safe working environment;
- (ii) safe systems of work;
- (iii) plant and substances in a safe condition;

(b) shall provide adequate facilities of a prescribed kind for the welfare of employees at any workplace that is under the control and management of the employer;

and

(c) shall provide such information, instruction, training and supervision as are reasonably necessary to ensure that each employee is safe from injury and risks to health.

Penalty—

(a) in the case of a first offence—Division 2 fine;

(b) in the case of a second or subsequent offence—Division 1 fine.

* * * * *

(3) Without derogating from the operation of subsection (1), an employer shall so far as is reasonably practicable—

(a) monitor the health and welfare of the employer's employees in their employment with the employer, insofar as that monitoring is relevant to the prevention of work-related injuries;

(b) keep information and records relating to work-related injuries suffered by employees in their employment with the employer and retain that information and those records for such period as may be prescribed;

(c) provide information to the employer's employees (in such languages as are appropriate) in relation to health, safety and welfare in the workplace (including the names of persons to whom the employees may make inquiries and complaints about matters affecting occupational health, safety or welfare);

(d) ensure that any employee who is to undertake work of a hazardous nature not previously performed by the employee receives proper information, instruction and training before he or she commences that work;

(e) ensure that any employee who is inexperienced in the performance of any work of a hazardous nature receives such supervision as is reasonably necessary to ensure his or her health and safety;

(f) ensure that any employee who could be put at risk by a change in the workplace, in any work or work practice, in any activity or process, or in any plant—

(i) is given proper information, instruction and training before the change occurs;

and

(ii) receives such supervision as is reasonably necessary to ensure his or her health and safety;

(g) ensure that any manager or supervisor is provided with such information, instruction and training as are necessary to ensure that each employee under his or her management or supervision is, while at work, so far as is reasonably practicable, safe from injury and risks to health;

(h) monitor working conditions at any workplace that is under the management and control of the employer;

and

(i) ensure that any accommodation, or eating, recreational or other facility, provided for the benefit of the employer's employees while they are at work, or in connection with the performance of their work, and under the management or control of the employer (either wholly or substantially), is maintained in a safe and healthy condition.

Employers' statements for health and safety at work

20. (1) Every employer shall—

(a) prepare and maintain, in consultation with—

(i) health and safety committees;

(ii) the employer's employees;

(iii) any health and safety representative who represents those employees;

(iv) on the application of an employee—a registered association of which that employee is a member;

and

(v) if the employer so decides—any other registered association nominated by the employer of which the employer is a member,

policies relating to occupational health, safety and welfare at the workplace;

and

(b) (i) prepare and keep up to date a written statement setting out with reasonable particularity the arrangements, practices and procedures at the workplace protecting the health and safety of the employer's employees at the workplace;

and

(ii) take reasonable steps to bring the contents of that statement to the notice of those employees.

* * * * *

Duties of workers

21. (1) An employee shall take reasonable care—

(a) to protect his or her own health and safety at work;

and

(b) to avoid adversely affecting the health or safety of any other person through any act or omission at work,

and, in particular, shall so far as is reasonable (but without derogating from any common law right)—

(c) use any equipment provided for health or safety purposes;

(d) obey any reasonable instruction that his or her employer may give in relation to health or safety at work;

(e) comply with any policy published or approved by the Commission that applies at the workplace;

and

(f) ensure that he or she is not, by the consumption of alcohol or a drug, in such a state as to endanger his or her own safety at work or the safety of any other person at work.

Penalty: Division 7 fine.

(2) In determining the standard of care applicable to a worker whose native language is not English and who is not reasonably fluent in English regard must be had to—

(a) whether information relating to occupational health and safety has been reasonably available to the worker in a language and form that the worker might reasonably be expected to understand;

and

(b) whether instruction or training of the worker (if any) has been carried out in a language and form that the worker might reasonably be expected to understand.

Duties of employers and self-employed persons

22. An employer or a self-employed person shall take reasonable care—

(a) to protect his or her own health and safety at work;

and

(b) to avoid adversely affecting the health or safety of any other person (not being an employee employed or engaged by the employer or the self-employed person) through an act or omission at work.

Penalty: Division 6 fine.

Duties of occupiers

23. The occupier of a workplace shall ensure so far as is reasonably practicable—

(a) that the workplace is maintained in a safe condition;

and

(b) that the means of access to and egress from the workplace are safe.

Duties of designers and owners of buildings

23a. (1) A person who designs a building that is reasonably expected to comprise or include a workplace must—

(a) ensure so far as is reasonably practicable that the building is designed so that people who might work in, on or about the workplace are, in doing so, safe from injury and risks to health;

and

(b) ensure that the building complies in all respects with prescribed requirements (if any) applicable to it.

Penalty: Division 2 fine.

(2) The owner of a building that comprises or includes a workplace must—

(a) ensure so far as is reasonably practicable that the building, and any fixtures or fittings within the building that are under the control of the owner, are in a condition that allows people who might work in, on or about the workplace to be safe from injury and risks to health;

and

(b) ensure that the building complies in all respects with prescribed requirements (if any) applicable to it.

Penalty: Division 2 fine.

(3) In this section—

“building” includes a part of a building.

Duties of manufacturers, etc.

24. (1) A person who designs, manufactures, imports or supplies any plant for use at work shall—

(a) ensure so far as is reasonably practicable that the plant is designed and constructed so as to be safe—

(i) when properly used and maintained;

and

(ii) when subjected to reasonably foreseeable forms of misuse;

(b) ensure so far as is reasonably practicable that the plant is designed and constructed so that people who might use, clean or maintain the plant are, in doing so, safe from injury and risks to health;

(c) take such steps to test or examine, or arrange for the testing or examination of, the plant as are reasonably necessary to ensure compliance with paragraphs (a) and (b);

(d) ensure that the plant complies in all respects with prescribed requirements (if any) applicable to it;

and

(e) ensure so far as is reasonably practicable that adequate information about any conditions necessary to ensure the safe installation, use and maintenance of the plant is supplied with the plant.

Penalty: Division 2 fine.

(2) A person who erects or installs any plant for use at a workplace shall ensure so far as is reasonably practicable that it will be safe—

(a) when properly used and maintained;

and

(b) when subjected to reasonably foreseeable forms of misuse.

(2a) Without derogating from the operation of subsections (1) and (2), where any structure is to be erected in the course of any work—

(a) the person who designs the structure must ensure so far as is reasonably practicable that the structure is designed so that the persons who are required to erect it are, in doing so, safe from injury and risks to health;

(b) any person who manufactures any materials to be used for the purposes of the structure must ensure so far as is reasonably practicable that the materials are manufactured so that the persons who are required to erect the structure are, in using, handling or otherwise dealing with the materials, safe from injury and risks to health;

(c) any person who imports or supplies any materials to be used for the purposes of the structure must ensure so far as is reasonably practicable that the materials are in such a state as to be safe to any person who must use, handle or otherwise deal with the materials;

and

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

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

(a) ensure so far as is reasonably practicable that the substance is in such a state as to be safe—

(i) when properly used, handled, processed, stored, transported or disposed of;

and

(ii) when subjected to reasonably foreseeable forms of improper use, handling, processing, storage, transportation or disposal;

(b) ensure so far as is reasonably practicable that the substance is in such a state that persons who might use, handle, process, store, transport or dispose of the substance are, in doing so, safe from injury and risks to health;

(c) take such steps to test or examine, or arrange for the testing or examination of, the substance as are reasonably necessary to ensure compliance with paragraphs (a) and (b);

(d) ensure that the substance complies in all respects with prescribed requirements (if any) applicable to it;

and

(e) ensure so far as is reasonably practicable that adequate information about any conditions necessary to ensure its safe use, handling, processing, storage, transportation or disposal is provided in connection with the supply of the substance.

Penalty: Division 2 fine.

- (4) In this section—
“structure” includes a part of a structure.

Duties applicable to all persons

25. (1) A person (not being an employer, employee or occupier of a workplace) shall not—

- (a) misuse or damage anything provided in the interests of health, safety or welfare;
- or
- (b) place at risk the health or safety of any other person while that person is at work.

(2) It is a defence to a charge of an offence against subsection (1) for the defendant to prove—

- (a) that the act or omission alleged to give rise to the offence was neither intentional nor reckless;
- or
- (b) that there is a reasonable excuse for that act or omission.

PART IV

HEALTH AND SAFETY REPRESENTATIVES AND COMMITTEES

DIVISION I—PRELIMINARY

Preliminary

26. For the purposes of this Part, “employee” does not include—

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

or

- (c) where the employer is a body corporate, an officer of the body corporate.

DIVISION II—APPOINTMENT OF HEALTH AND SAFETY REPRESENTATIVES
AND COMMITTEES**Interpretation**

26a. In this Division—

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

“recognized member” of a group means a member of the group who—

- (a) by agreement between the employer and—

- (i) any interested employees;

or

- (ii) a person appointed by such employees;

or

- (b) in default of agreement, by determination of the Industrial Commission, is recognized as a member of the group for the purposes of the election of any health and safety representative to represent the group, and the other provisions of this Division relating to the office of health and safety representative.

Health and safety representatives may represent groups

27. (1) A group of employees may elect a health and safety representative to represent a work group for the purposes of this Act.

(2) The constitution of a work group will be determined by agreement between the employer and—

- (a) any interested employees;

or

- (b) a person appointed by such employees.

(3) Where an employer is requested by an employee to act to constitute a work group for the purposes of this section, the employer must respond to the request within 14 days of its receipt.

(4) If an employee is a member of a registered association, that registered association must, at the request of the employee, be consulted in relation to any proposal relating to the formation of a work group that could affect the employee.

(5) A work group must be constituted in a manner that takes into account—

(a) the need for a health and safety representative representing that group to be able to perform his or her functions effectively;

and

(b) the need for the employer to be able to fulfil his or her responsibilities to a health and safety representative representing that group effectively.

(6) Insofar as may be relevant to a particular case, and subject to any guidelines issued by the Commission, the following matters should be considered in relation to the constitution of a work group:

(a) the number of employees employed by the employer;

(b) the nature of each type of work performed by the employer's employees;

(c) the number and grouping of employees who perform the same or similar types of work;

(d) the areas or places where each type of work is performed;

(e) the extent to which any employee must move from place to place while at work;

(f) the times at which particular work is performed;

(g) the overtime or shift-work arrangements that apply in relation to the performance of work;

(h) the nature of particular risks involved in each type of work;

(i) any other relevant factor.

(7) Where—

(a) an employer fails to respond to a request in accordance with subsection (3);

or

(b) a dispute arises in relation to the constitution of a work group under this section,

an employee, the employer or, if any employee is a member of a registered association, that registered association if so requested by such an employee, may refer the matter to the Industrial Commission.

(8) Where a matter is referred to the Industrial Commission under subsection (7), the Industrial Commission must attempt to resolve the matter by conciliation.

(9) If a matter cannot be resolved within a reasonable time by conciliation under subsection (8), the Industrial Commission must refer the matter to the President of the Industrial Court for determination by a review committee.

(10) The review committee may determine how a particular work group or groups are to be constituted and the decision of the review committee is binding on all parties.

(11) The constitution of a work group may be varied at any time—

(a) by agreement between the employer and—

(i) any interested employees;

or

(ii) a person appointed by such employees;

or

(b) in default of agreement, by a review committee.

(12) The employer must keep a list of the work groups constituted under this section.

(13) A copy of the list must be displayed by the employer in a prominent place at his or her principal place of business, or at any other place that is appropriate taking into account the constitution of the various work groups.

Election of health and safety representatives

28. (1) The election of health and safety representatives shall be conducted in accordance with this section.

(2) A person is eligible to be a candidate for election as a health and safety representative if the person is a recognized member of the work group that the health and safety representative is to represent.

(3) The conduct of an election of a health and safety representative will be carried out by a person selected by agreement between at least one-half of the recognized members of the work group or, failing the selection of such a person within a reasonable time, on application to the Commission, by a person nominated by the Commission.

(4) Every recognized member of the work group is entitled to vote at the election to appoint the health and safety representative to represent that group.

(5) Subject to subsection (6), the election of a health and safety representative must be carried out in accordance with procedures prescribed by regulations made on the recommendation of the Commission.

(6) The election must be carried out by secret ballot if any recognized member of the work group so requests.

(7) If there is only one candidate for election—

(a) a ballot need not be held;

and

(b) the candidate shall be deemed to have been duly elected.

(8) If a dispute arises in relation to the election of a health and safety representative under this section—

(a) a person who is a recognized member of the work group;

or

(b) if any such person is a member of a registered association and requests the registered association to act on his or her behalf—that registered association,

may refer the dispute to the Industrial Commission.

(9) Where a dispute is referred to the Industrial Commission under subsection (8), the Industrial Commission shall attempt to resolve the dispute by conciliation.

(10) If a dispute cannot be resolved within a reasonable time by conciliation under subsection (9), the Industrial Commission shall refer the dispute to the President of the Industrial Court for determination by a review committee.

(11) The review committee may determine the dispute and the decision of the review committee is binding on all the parties.

(12) On being elected under this section, a health and safety representative shall, in accordance with the regulations, provide the prescribed information to the employer and the Commission.

Election of a deputy health and safety representative

29. (1) The recognized members of a work group may elect one of their number to be a deputy to the health and safety representative for that group.

(2) A deputy may, in the absence of the health and safety representative, perform the functions of the health and safety representative under this Act.

Term of office of a health and safety representative

30. (1) Subject to this section, a health and safety representative shall hold office for a term of three years.

(2) A person ceases to be a health and safety representative for a work group if that person—

- (a) completes a term of office as a health and safety representative expires and is not re-elected;
- (b) ceases to belong to the relevant work group;
- (c) resigns as a health and safety representative;
- (ca) is removed from office by a resolution of at least two-thirds of the recognized members of the group on the ground that they consider that the person has ceased to be a suitable person to act as their representative;

or

- (d) is disqualified by a review committee.

(3) Where there is a substantial change in the circumstances surrounding the constitution of a work group and it is agreed at that time by at least one-half of the recognized members of the group that a fresh election should be held to elect a health and safety representative, the health and safety representative who was representing that group must resign and a fresh election must be held.

(4) An application for the disqualification of a health and safety representative may be made to the President of the Industrial Court for determination by a review committee by—

- (a) the employer;
- (b) a registered association of which any recognized member of the work group that the health and safety representative represents is a member;

or

- (c) a majority of the employees who at any particular time are the members of the work group that the health and safety representative represents.

(5) The grounds upon which a health and safety representative may be disqualified are—

(a) that the health and safety representative has on repeated occasions neglected to carry out the functions of a health and safety representative under this Act;

or

(b) that the health and safety representative has—

(i) exercised or performed powers or functions under this Act for an improper purpose;

or

(ii) disclosed information (being information acquired from the employer) for an improper purpose.

(6) If a review committee is satisfied that a ground for disqualification exists, the review committee may, if it thinks fit, disqualify the health and safety representative for a specified period.

(7) In determining what action (if any) should be taken under subsection (6), the review committee shall take into account—

(a) the harm (if any) that has been caused by the health and safety representative;

(b) the past record of the health and safety representative in exercising or performing powers or functions under this Act;

(c) whether the actions of the health and safety representative were contrary to the public interest;

(d) any other relevant consideration.

(8) For the purposes of this section, a reference to a health and safety representative includes a deputy to a health and safety representative.

Health and safety committees

31. (1) At the request of—

(a) a health and safety representative;

(b) a prescribed number of employees;

or

(c) a majority of the employees at any workplace,

the employer must, within two months of the request, establish one or more health and safety committees.

(2) The composition of a health and safety committee shall be determined by agreement between the employer, the health and safety representative and any interested employees.

(3) If an employee is a member of a registered association, that registered association shall, at the request of the employee, be consulted in relation to the composition of a health and safety committee under this section.

(4) The membership of a committee should, so far as is reasonably practicable, represent a reasonable cross-section of the persons whose activities, work, or health, safety or welfare (whether as principal, manager, supervisor or employee) could be within the responsibilities of the committee subject however to the following qualifications:

(a) any relevant health and safety representative should be encouraged to be a member of the committee;

and

(b) at least half of the members of the committee must be employees.

(5) If at any time agreement cannot be reached on any matter relating to the establishment or composition of a health and safety committee, an interested party may refer the matter to the Industrial Commission to resolve the disagreement.

(6) Where a matter is referred to the Industrial Commission under subsection (5), the Industrial Commission shall attempt to resolve the matter by conciliation.

(7) If a matter cannot be resolved within a reasonable time by conciliation under subsection (6), the Industrial Commission shall refer the matter to the President of the Industrial Court for determination by a review committee.

(8) The review committee may determine any matter relating to the establishment or composition of a health and safety committee and its decision is binding on all the parties.

(9) Subject to the regulations, the proceedings of a health and safety committee shall be conducted in such manner as the committee may determine.

(10) A health and safety committee shall hold at least one meeting in every 3 months.

(11) A meeting of a health and safety committee shall be held—

(a) on the request of at least half of the members of the committee;

(b) on the request of a health and safety representative;

or

(c) on the request of the employer.

(12) The composition of a health and safety committee may be varied at any time by agreement between the employer, any relevant health and safety representative, and any interested employees who are within the responsibility of the committee.

(13) In addition to the other matters provided by this section, the regulations may make provision for—

(a) the term of office of a member of a health and safety committee;

(b) the disqualification of a person from acting, or continuing to act, as a member of a health and safety committee;

(c) the appointment of a person to a casual vacancy in the membership of a health and safety committee.

(14) This section does not apply to a prescribed employer or an employer of a prescribed class (if any).

DIVISION III—FUNCTIONS OF HEALTH AND SAFETY REPRESENTATIVES AND COMMITTEES

Functions of health and safety representatives

32. (1) A health and safety representative may, for the purpose of the health, safety and welfare of the employees in the work group that the health and safety representative represents—

(a) inspect the whole or any part of any relevant workplace—

(i) at any time after giving reasonable notice to the employer (which must state the name of any consultant who is to accompany the representative during the inspection and the purpose for which the consultant's advice is sought);

or

(ii) immediately, in the event of an accident, dangerous occurrence or imminent danger or risk to the health or safety of any person;

(b) accompany an inspector during an inspection of any relevant workplace;

(c) investigate complaints relating to occupational health, safety or welfare made by employees in the work group;

(d) at the request of the employee, be present at any interview concerning occupational health, safety or welfare between an inspector and an employee;

(e) at the request of the employee, be present at any interview concerning occupational health, safety or welfare between the employer (or a representative of the employer) and an employee;

(f) make representations to the employer on any matter that relates to occupational health, safety or welfare at any relevant workplace.

(2) In relation to the inspection of a workplace under subsection (1)(a), a health and safety representative may—

(a) be accompanied by such consultants as the representative thinks fit;

(b) discuss any matter affecting health, safety or welfare with any employee at the workplace;

and

(c) carry out any investigation that may appear appropriate.

(3) Subsections (1) and (2) are subject to the following qualifications:

(a) a health and safety representative is only entitled to be accompanied on an inspection by a consultant approved by—

(i) the Commission;

(ii) a health and safety committee that has responsibilities in relation to the work group that the health and safety representative represents;

or

(iii) the employer;

and

(b) a health and safety representative should take reasonable steps to consult with the employer in relation to carrying out an investigation of any workplace and the outcome of any such investigation.

(4) An employer is not liable for the cost of a consultant attending at a workplace pursuant to this section.

(5) The powers and functions of a health and safety representative under this Act are limited to acting in relation to the work group that the health and safety representative represents.

(6) No provision of this Act shall be construed as imposing any duty on a health and safety representative in his or her capacity as a health and safety representative.

(7) Where a health and safety representative exercises or performs a power or function under this Act—

(a) for an improper purpose intending to cause harm to the employer or a commercial or business undertaking of the employer;

or

(b) for an improper purpose related to an industrial claim or dispute,

the health and safety representative is guilty of an offence.

Penalty: Division 6 fine.

(8) In this section—

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

Functions of health and safety committees

33. (1) The functions of a health and safety committee are—

(a) to facilitate co-operation between an employer and the employees of the employer in initiating, developing, carrying out and monitoring measures designed to ensure the health, safety and welfare at work of the employees;

(b) to assist in the resolution of issues relating to occupational health, safety or welfare that arise at any relevant workplace;

(c) to assist in the formulation, review and dissemination (in such languages as are appropriate) to employees of the occupational health, safety and welfare practices, procedures and policies that are to be followed at any relevant workplace;

(d) to consult with the employer on any proposed changes to occupational health, safety or welfare practices, procedures or policies;

(e) to keep under review—

(i) developments in the field of rehabilitation of employees who suffer work-related injuries;

and

(ii) the employment of employees who suffer from any form of disability;

(f) to assist—

(i) in the return to work of employees who have suffered work-related injuries;

and

(ii) in the employment of employees who suffer from any form of disability;

and

(g) such other functions as are prescribed or agreed upon by the employer and the health and safety committee.

(2) A health and safety committee may establish such sub-committees as it thinks fit (which may, but need not consist of, or include, members of the committee) to provide advice or to assist it in the performance of its functions under this Act.

(3) A health and safety committee may delegate any of its functions to a sub-committee established under subsection (2).

- (4) A delegation under subsection (3)—
- (a) may be made subject to such conditions as the health and safety committee thinks fit;
 - (b) is revocable at will;
- and
- (c) does not derogate from the power of the committee to act in any matter itself.

Responsibilities of employers

34. (1) An employer must—
- (a) consult any relevant health and safety representatives and health and safety committees on any proposed changes to any workplace, the plant used at any workplace, the substances used, handled, processed or stored at any workplace, the work to be conducted at any workplace or the procedures for carrying out work at any workplace, where those changes might affect the health, safety or welfare of employees at the workplace;
 - (b) consult any relevant health and safety representatives and health and safety committees on the occupational health, safety and welfare practices, procedures and policies that are to be followed at any workplace;
 - (c) consult any relevant health and safety representatives and health and safety committees on any proposed changes to occupational health, safety and welfare practices, procedures or policies;
 - (d) consult any relevant health and safety representatives on any proposed application to the Chief Inspector for the modification of the requirements of any regulation;
 - (e) at the request of the employee, permit a health and safety representative to be present at any interview concerning occupational health, safety or welfare between the employer (or a representative of the employer) and an employee who is a member of the work group that the health and safety representative represents;
 - (f) permit any relevant health and safety representative to accompany an inspector during an inspection of any workplace;
 - (g) permit a health and safety representative to have access to such information as the employer possesses or can reasonably obtain—
 - (i) relating to risks that arise or may arise at any workplace where employees who are members of the work group that the health and safety representative represents work, out of work conducted at any workplace or out of plant or substances used at any workplace;or
 - (ii) concerning the health and safety of the employees of the employer (but personal information regarding the health of an employee shall not be divulged under this subparagraph without the consent of the employee),and, when requested to do so, supply a copy of that information to the health and safety representative;

(h) immediately notify a health and safety representative of the occurrence of an accident, dangerous occurrence, imminent danger or risk or hazardous situation that affects or may affect any employee who is a member of the work group that the health and safety representative represents;

(i) notify a health and safety representative of the occurrence of any work-related injury to an employee who is a member of the work group that the health and safety representative represents;

and

(j) provide such other facilities and assistance to health and safety representatives as are necessary or prescribed to enable them to perform their functions under this Act.

(2) An employer is not required to give to a health and safety representative under subsection (1)(g)—

(a) information that is privileged on the ground of legal professional privilege;

or

(b) information that is relevant to proceedings that have been commenced under this Act.

(3) A health and safety representative is entitled to take, without loss of income, such time off work as is reasonably necessary or authorized by the regulations for the purposes of performing the functions of a health and safety representative under this Act or taking part in any course of training relating to occupational health, safety or welfare that is approved by the Commission.

(4) Subsection (3) is subject to the following qualifications—

(a) where—

(i) the employer employs 10 or less employees;

and

(ii) the employer is not an employer in respect of whom a supplementary levy has been imposed by the Workers Rehabilitation and Compensation Corporation under Part V of the *Workers Rehabilitation and Compensation Act, 1986*,

the health and safety representative may only take such time off work to take part in a course of training as the employer reasonably allows;

(b) a deputy health and safety representative may only take time off work to take part in a course of training with the consent of the employer;

and

(c) where there is a reasonable choice of courses of training available to a health and safety representative, the health and safety representative shall consult with the employer before choosing the course that he or she is to attend.

(5) The Commission may prepare and publish guidelines in relation to the operation of subsection (3).

(6) If a dispute arises in relation to the entitlement of a health and safety representative under subsection (3), the health and safety representative or the employer may refer the dispute to the Industrial Commission.

(7) The Industrial Commission may determine the dispute and the decision of the Commission is binding on the health and safety representative and the employer.

DIVISION IV—RESOLUTION OF HEALTH, SAFETY OR WELFARE ISSUES

Default notices

35. (1) Where a health and safety representative is of the opinion that a person—

(a) is contravening a provision of this Act;

or

(b) has contravened a provision of this Act in circumstances that make it likely that the contravention will be repeated,

the health and safety representative shall consult with the employer in relation to the matter.

(2) If the health and safety representative and the employer are unable within a reasonable time to resolve a particular matter pursuant to subsection (1), the matter shall, if there is a health and safety committee that has responsibility in relation to the matter, be referred to that committee or, if there is no such committee, the matter may be referred to an inspector.

(3) Notwithstanding subsections (1) and (2), if after taking reasonable steps to stop by consultation a contravention of this Act or prevent a repeated contravention of this Act the health and safety representative is of the opinion that the matter has not been satisfactorily resolved, the health and safety representative may issue a default notice requiring the person to whom the notice is addressed to remedy the contravention.

(4) A health and safety representative shall not issue a default notice in relation to any matter that is the subject of an improvement notice or a prohibition notice.

(5) Where a health and safety representative issues a default notice, the notice must—

(a) state that the health and safety representative is of the opinion that a person—

(i) is contravening a provision of this Act;

or

(ii) has contravened a provision of this Act in circumstances that make it likely that the contravention will be repeated;

and

(b) state the grounds of the health and safety representative's opinion.

(6) A health and safety representative may specify in a default notice a day by which the matters referred to in the notice must be remedied.

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

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

(a) if a day has been specified under subsection (6)—by that day;

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

the matters referred to in the notice.

Penalty: Division 3 fine.

(9) If—

(a) a person to whom a default notice is addressed or, where that person is an employee, that person's employer, considers that a default notice need not have been issued or is, for some other reason, inappropriate;

or

(b) a health and safety representative—

(i) considers that there has been unreasonable delay in taking action under subsection (8);

or

(ii) is dissatisfied with the action taken under that subsection in response to the notice,

an inspector may be requested to attend at the workplace.

(10) A request under subsection (9)(a) must be made by a person within 14 days of the receipt of the default notice (or a copy of the notice) by the person.

(11) Where an inspector has been requested to attend at a workplace under subsection (9)(a), the operation of the default notice shall, pending the attendance of the inspector, be suspended.

(12) Where a default notice is issued, the person to whom notice is addressed must, on receipt of the notice (or a copy of the notice)—

(a) bring the notice to the attention of any person whose work is affected by the notice;

(b) display the notice or a copy of the notice in a prominent place at or near any workplace that is affected by the notice;

and

(c) keep a copy of the notice for such period as may be prescribed.

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

(14) A default notice may be cancelled—

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

or

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

Action where the health and safety of a worker is threatened

36. (1) Where a health and safety representative is of the opinion that there is an immediate threat to the health or safety of an employee who is a member of the work group that the health and safety representative represents, the health and safety representative shall consult with the employer in relation to the matter.

(2) If the health and safety representative and the employer are unable within a reasonable time to resolve a particular matter pursuant to subsection (1), the matter shall, if there is a health and safety committee that has responsibility in relation to the matter, be referred to that committee or, if there is no such committee, the matter shall be referred to an inspector.

(3) Notwithstanding subsections (1) and (2), if the health and safety representative is of the opinion that given the nature of the threat and degree of risk work should immediately cease, the health and safety representative may direct that work cease until adequate measures are taken to protect the health and safety of an employee.

(4) Where a health and safety representative gives a direction that work cease—

(a) if the direction is given without consultation with the employer or before the matter has been considered by a health and safety committee (if any) that has responsibility in relation to the matter, the health and safety representative shall, as soon as practicable after giving the direction, consult with the employer and, if it is necessary or appropriate, with the committee;

and

(b) the employer or the health and safety representative may request an inspector to attend at the workplace.

Attendance by inspector

37. (1) Where a matter is referred to an inspector under this Division, the inspector shall attend at the workplace as soon as possible but in any event—

(a) if a direction has been given that work cease—

(i) where the workplace is within the metropolitan area—within 1 business day;

(ii) where the workplace is outside the metropolitan area—within 2 business days;

or

(b) in any other case—within 7 business days.

(2) An inspector—

(a) shall attempt to resolve any occupational health, safety or welfare matter that remains unresolved;

(b) if a default notice has been issued, may—

(i) confirm the notice;

(ii) confirm the notice with such modifications as the inspector thinks fit;

or

(iii) cancel the notice;

(c) if the inspector thinks fit, may issue a prohibition notice or an improvement notice;

and

(d) may make such recommendations or take such other action as appear appropriate.

(3) Where a work cessation direction was given and an inspector determines that there was an immediate threat to health or safety justifying a cessation of work or that the health and safety representative reasonably believed that such a threat existed, any employee employed in the work who is remunerated by wages or salary is entitled to be paid for the period of cessation so as not to suffer a loss of income.

(4) Where an inspector confirms a default notice or confirms such a notice with modifications, the inspector shall order the person to whom the notice was addressed to comply with the notice within a period specified by the inspector.

(5) A person who contravenes or fails to comply with a default notice that is confirmed by an inspector within the period specified by the inspector is guilty of an offence.

Penalty: Division 3 fine.

(6) An employer, employee or health and safety representative who is dissatisfied with the actions of an inspector under this section may apply to the President of the Industrial Court for the determination of the matter by a review committee.

(7) At the conclusion of a review under this section, a review committee may give such directions as it thinks fit.

(8) A person shall not contravene or fail to comply with a direction of a review committee within any period specified by the review committee.

PART V
INSPECTIONS

Powers of entry and inspection

38. (1) For the purposes of this Act, a member of the Commission, an inspector or a person authorized by the Commission or the Director of the Department of Labour to exercise the powers conferred by this section may—

- (a) enter at any time any workplace;
- (b) inspect the place, anything at the place and work in progress at the place;
- (c) require a person who has custody or control of books, documents or records to produce such books, documents or records;
- (d) examine, copy and take extracts from any books, documents or records, or require an employer to provide a copy of any books, documents or records;
- (e) take photographs, films or video or audio recordings;
- (f) take measurements, make notes and records and carry out tests;
- (g) require any person to answer, to the best of that person's knowledge, information and belief, any question relating to the health, safety or welfare of persons at any workplace or to any other matter to which this Act applies (whether the question is put directly or through an interpreter);
- (h) require an employer to produce a copy of any statement or record that is required to be prepared or kept under this Act.

(1a) Subsection (1)(a) is subject to the qualification that a person cannot enter a workplace where a self-employed person works alone unless he or she has a reasonable belief that there is a risk to the health or safety of a person other than the self-employed person.

(2) Where—

- (a) a person whose native language is not English is suspected of having breached this Act;
 - (b) the person is being interviewed by an inspector in relation to that suspected breach;
- and
- (c) the person is not reasonably fluent in English,

the person is entitled to be assisted by an interpreter during the interview.

(3) A person is not required to provide under subsection (1)—

- (a) information that is privileged on the ground of legal professional privilege;
- or
- (b) information that is relevant to proceedings that have been commenced under this Act.

(4) In addition to the powers contained in subsection (1), an inspector may, if the inspector suspects on reasonable grounds that an offence against this Act has been committed, seize and retain anything that affords evidence of that offence, or in relation to which the offence is suspected of having been committed.

(5) An inspector shall, at the request of the occupier of a place from which anything is seized under subsection (4), provide a receipt for the thing seized.

(6) In the exercise of powers under this section, a person may be accompanied by such assistants, authorized by the Commission or the Director of the Department of Labour, as may be necessary or desirable in the circumstances.

(7) The occupier of a place that is the subject of an inspection under this section and any employer at that place shall provide such assistance as may be necessary to facilitate the exercise of the powers conferred by this section.

(8) A person shall not—

(a) hinder or obstruct a member of the Commission, inspector or other person authorized by the Commission or the Director of the Department of Labour in the exercise of a power conferred by this section;

or

(b) refuse or fail, without lawful excuse, to comply with a requirement under this section.

Penalty: Division 4 fine.

(9) Where an occupier becomes aware of the attendance of an inspector at the workplace, the occupier shall notify the health and safety representatives who are present at the workplace.

(10) Where an inspector carries out an inspection of a workplace under this section, the inspector—

(a) shall take reasonable steps to consult with the occupier of the workplace (or, if the occupier is not present, the person who at that time is apparently in control of the workplace), any employer of employees at the workplace and any health and safety representative who represents those employees on—

(i) any occupational health, safety or welfare issue that arises from the inspection;

and

(ii) the action (if any) that the inspector considers should be taken as a result of the inspection;

(b) shall make available to the occupier, any employer and any health and safety representative copies of any written report (or any part of a written report) made by the inspector in relation to the inspection, insofar as that report relates to—

(i) factual information obtained during the inspection;

or

(ii) the action (if any) that the inspector has taken or proposes to take as a result of the inspection,

(and, when requested to do so, shall supply a copy of that report or that part of the report to the occupier, employer and health and safety representatives);

and

(c) shall take reasonable steps—

(i) to relate to a health and safety representative the contents of any oral report made by the inspector to the occupier or an employer at the workplace and the details of any consultation that has occurred in the absence of the health and safety representative (insofar as that

report or consultation relates to the health, safety or welfare of employees in the work group that the health and safety representative represents);

and

- (ii) to relate to an employer the contents of any oral report made by the inspector to a health and safety representative at the workplace and the details of any consultation that has occurred in the absence of the employer.

(11) An inspector who has a pecuniary or other personal interest in any business carried on at a workplace shall not inspect that workplace unless and until the inspector has disclosed that interest to the Director of the Department of Labour and has obtained the Director's permission to carry out the inspection.

PART VI

IMPROVEMENT NOTICES AND PROHIBITION NOTICES

Improvement notices

39. (1) Where an inspector is of the opinion that a person—

(a) is contravening a provision of this Act;

or

(b) has contravened a provision of this Act in circumstances that make it likely that the contravention will be repeated,

the inspector may issue an improvement notice requiring the person to whom the notice is addressed to remedy the matters occasioning the contravention or likely contravention.

(2) An improvement notice must—

(a) state that the inspector is of the opinion that a person—

(i) is contravening a provision of this Act;

or

(ii) has contravened a provision of this Act in circumstances that make it likely that the contravention will be repeated;

(b) state the grounds of the inspector's opinion;

and

(c) specify the provision of this Act in respect of which that opinion is held.

(3) An inspector may—

(a) include in an improvement notice directions as to the measures to be taken to remedy the contravention, or to avoid further contravention, of the Act;

(b) specify in an improvement notice a day by which the matters referred to in the notice must be remedied.

(4) Subject to this Act, a person who contravenes or fails to comply with an improvement notice is guilty of an offence.

Penalty: Division 3 fine.

Prohibition notices

40. (1) Where an inspector is of the opinion that there is an immediate risk to the health or safety of a person at work, the inspector may issue to the person apparently in control of the activity from which the risk arises a prohibition notice prohibiting the carrying on of the activity until an inspector is satisfied that adequate measures have been taken to avert, eliminate or minimize the risk.

(2) A prohibition notice must—

(a) identify the activity from which the immediate risk to health or safety arises;

and

(b) state the grounds of the inspector's opinion that there is an immediate risk to the health or safety of a person.

(3) An inspector may include in a prohibition notice directions as to the measures to be taken to avert, eliminate or minimize the risk to which the notice relates.

(4) Subject to this Act a person who contravenes or fails to comply with a prohibition notice is guilty of an offence.

Penalty: Division 2 fine plus \$10 000 for each day that the contravention or failure continues.

Notices to be displayed

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

(2) Where an improvement notice or a prohibition notice is issued, the person to whom the notice is addressed must, on receipt of the notice (or a copy of the notice)—

(a) supply a copy of the notice to any health and safety representative who represents any employees whose work is affected by the notice;

(b) bring the notice to the attention of any person whose work is affected by the notice;

and

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

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

Review of notices

42. (1) Any of the following persons, namely—

(a) an employer affected by an improvement notice or prohibition notice;

(b) a person in relation to whose work an improvement notice or a prohibition notice applies;

or

(c) a health and safety representative who represents any employee whose work is affected by an improvement notice or a prohibition notice,

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

(2) An application under subsection (1)(a) or (b) must be made by a person within 14 days of the receipt of the notice (or a copy of the notice) by the person.

(3) Pending the determination of an application for review under this section the operation of the notice to which the application relates shall—

(a) in the case of an improvement notice—be suspended;

(b) in the case of a prohibition notice—continue.

(4) A review committee may if it thinks fit make an interim order suspending the operation of a prohibition notice until the matter is resolved.

(5) An order under subsection (4) must be made subject to such conditions as may be necessary to protect the health and safety of any person at work.

(6) Where a prohibition notice has been issued, the proceedings on a review under this section must be carried out as a matter of urgency.

Powers of committee on review

43. (1) At the conclusion of a review under this Part, a review committee may—

- (a) confirm any notice to which the review relates;
- (b) confirm a notice with such modifications as it thinks fit;
- (c) cancel a notice;

or

- (d) issue a notice or issue a different notice in substitution for the notice.

(2) Where a review committee confirms an improvement notice the operation of which has been suspended or confirms such a notice with modifications, the review committee shall order the person to whom the notice was addressed to comply with the notice within a period specified by the committee.

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

Penalty: Division 2 fine.

Worker's entitlement to pay while notice is in force

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

Action on default

45. (1) Subject to subsection (2), where a person is required by an improvement notice or prohibition notice to take any specified measures and the person fails to comply with the notice, the inspector who issued the notice may have those measures carried out and, for that purpose, the inspector or any person authorized by the inspector may, after giving reasonable notice to the person required to take the measures, enter and take possession of any workplace (taking such measures as are reasonably necessary for the purpose) and do, or cause to be done, such things as full and proper compliance with the notice may require.

(2) If a person who has been required by an improvement notice or prohibition notice to take specified measures stops using plant that is subject to the notice and satisfies an inspector that the plant will not be used again until the notice is complied with, action may not be taken under subsection (1) in relation to that plant (unless the plant is used again before the notice is complied with).

(3) If a person referred to in subsection (2) uses plant that is not to be used again until an improvement notice or prohibition notice is complied with before that notice is complied with, the person is guilty of an offence.

Penalty: Division 6 fine.

(4) The Crown may recover the costs and expenses reasonably incurred in an inspector or other authorized person exercising the powers under subsection (1) from the person who failed to comply with the notice, as a debt in a court of competent jurisdiction.

PART VII
REVIEW COMMITTEES

Review committees

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

Constitution of review committees

47. (1) A review committee shall be constituted in relation to particular proceedings by the President of the Industrial Court.

(2) The President of the Industrial Court shall constitute a review committee by appointing one member from each of the panels constituted under subsection (3) to the committee.

(3) For the purpose of constituting review committees there shall be—

(a) a panel of Judges of the Industrial Court and Industrial Magistrates appointed by the President;

(b) a panel of members nominated by the Minister after taking into account the recommendations of employer associations;

and

(c) a panel of members nominated by the Minister after taking into account the recommendations of the United Trades and Labor Council.

(4) A person shall cease to be a member of a panel if that person—

(a) resigns by written notice addressed to the President of the Industrial Court;

(b) is removed from the panel—

(i) in the case of a Judge or Industrial Magistrate—by the President;

or

(ii) in any other case—by the Minister,

on the ground of misconduct, neglect of duty, incompetence or mental or physical incapacity to carry out satisfactorily the duties of office;

or

(c) has completed a period of 3 years since being appointed to the panel, or last appointed to the panel, and is not reappointed to the panel.

(5) A member of a panel is entitled to such fees, allowances and expenses as the Governor may approve.

Procedures of the committee

48. (1) The member of a review committee appointed from the panel of Judges and Industrial Magistrates shall preside at any proceedings of the review committee.

(2) A decision in which any two members of a review committee concur is a decision of the committee.

(3) A review committee—

(a) shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms;

and

- (b) is not bound by any rules of evidence, but may inform itself on any matter in such manner as it thinks fit.

(4) A review committee shall give reasonable notice to the parties to proceedings before it of the time and place of those proceedings and shall afford the parties a reasonable opportunity to call or give evidence, to examine or cross-examine witnesses and to make submissions.

(5) In the exercise of its powers and functions, a review committee may—

- (a) by summons signed by the presiding member of the committee, require the attendance before the committee of any person;

- (b) by summons signed by the presiding member of the review committee, require the production of any document, object or material;

and

- (c) require any person appearing before the review committee to answer any relevant questions put by the committee, any member of the committee or by any person appearing before the committee.

(6) Where—

- (a) the native language of a person who is to give oral evidence in any proceedings before a review committee is not English;

and

- (b) the witness is not reasonably fluent in English,

the person is entitled to give that evidence through an interpreter.

(7) A person may present written evidence to a review committee in a language other than English if that written evidence has annexed to it—

- (a) a translation of the evidence into English;

and

- (b) an affidavit by the translator to the effect that the translation accurately reproduces in English the contents of the original evidence.

(8) If a person—

- (a) who has been served with a summons to attend before a review committee fails without reasonable excuse to attend in obedience to the summons;

- (b) who has been served with a summons to produce any document, object or material, fails without reasonable excuse to comply with the summons;

- (c) misbehaves before a review committee, wilfully insults a review committee or any member of a review committee, or interrupts the proceedings of a review committee;

or

- (d) refuses to answer any relevant question when required to do so by a review committee,

that person shall be guilty of an offence.

(9) A person is not obliged to answer a question under this section if the answer would tend to incriminate that person of an offence, or to produce a document, object or material if it or its contents would tend to incriminate that person of an offence.

(10) A review committee may—

- (a) refer any technical matter to an expert;
- (b) accept the evidence or report of an expert.

(11) A person is entitled to appear personally, or by representative, in proceedings before a review committee.

(12) A person who appears as a witness in proceedings before a review committee is, subject to any contrary direction by the review committee, entitled to reimbursement of expenses in accordance with the regulations.

(13) A review committee should hear and determine any matter referred to it as expeditiously as possible.

(14) Except as provided by this section, the proceedings of a review committee may be conducted in such manner as the review committee determines.

Appeals

49. (1) A party to proceedings before a review committee may appeal to the Supreme Court against a decision of the committee in those proceedings.

(2) For the purposes of an appeal under this section, the Supreme Court may be constituted of a single Judge.

(3) An appeal under this section may be on a question of law or a question of fact.

(4) An appeal on a question of fact may only occur with leave of the Supreme Court (which should only be granted where special reasons are shown).

(5) An appeal under this section must be instituted within 21 days of the decision appealed against unless the Supreme Court, in its discretion, allows a longer time for the institution of an appeal.

(6) Pending the determination of an appeal in a case where a prohibition notice has been issued, the operation of the prohibition notice shall, subject to an order made under subsection (7), continue.

(7) The Supreme Court may if it thinks fit make an interim order suspending the operation of a prohibition notice pending the determination of an appeal.

(8) An order under subsection (7) must be made subject to such conditions as may be necessary to protect the health and safety of the employees to whom the prohibition notice relates.

Immunity of members

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

PART VIII
MISCELLANEOUS

Immunity of inspectors and officers

51. (1) No personal liability attaches to an inspector or an officer of the Commission engaged in the administration or enforcement of this Act for an act or omission by the inspector or officer in good faith in the exercise or discharge, or purported exercise or discharge, of an official power or function under this Act.

(2) A liability that would, but for subsection (1), lie against an inspector or officer shall lie against the Crown.

Inspector to produce certificate of authority

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

Delegation by Director

53. (1) The Director of the Department of Labour may, by instrument in writing, delegate any of his or her functions or powers under this Act.

(2) A delegation under this section—

(a) may be made subject to such conditions as the Director thinks fit;

(b) is revocable at will;

and

(c) does not derogate from the power of the Director to act in any matter himself or herself.

Power to require information

54. (1) The Commission may in writing require a person to furnish such information relating to occupational health, safety or welfare as it reasonably requires for the purposes of this Act.

(2) A person is not required to provide to the Commission under subsection (1)—

(a) information that is privileged on the ground of legal professional privilege;

(b) information that is relevant to proceedings that have been commenced under this Act;

(c) information that would tend to incriminate the person who has the information of an offence;

or

(d) personal information regarding the health of a person who does not consent to the disclosure of the information.

Confidentiality

55. (1) Where a person performing any function under this Act (including a person acting as a consultant) obtains—

(a) information relating to commercial operations or trade processes;

or

(b) information relating to the personal affairs of a person,

the person shall not intentionally disclose that information unless—

(c) the disclosure is necessary for the proper performance of official duties;

(d) the disclosure is made with the consent of the person who furnished the information or to whom the information relates;

or

(e) the disclosure is required by a court or tribunal constituted by law.

Penalty: Division 6 fine.

(2) An inspector shall not intentionally disclose to an employer the name of a person who has made a complaint to the inspector in relation to occupational health, safety or welfare unless—

(a) the disclosure is made with the consent of the complainant;

or

(b) the disclosure is required by a court or tribunal constituted by law.

Discrimination against workers

56. (1) An employer shall not dismiss an employee, injure an employee in employment or threaten, intimidate or coerce an employee by reason of the fact that the employee—

(a) is a health and safety representative or a member of a health and safety committee or has performed the functions of a health and safety representative or of a member of a health and safety committee;

(b) has assisted or given information to an inspector, health and safety representative or health and safety committee;

or

(c) has made a complaint in relation to a matter affecting health, safety or welfare.

Penalty: Division 6 fine.

(2) An employer or prospective employer shall not refuse or deliberately omit to offer employment to a prospective employee or treat a prospective employee less favourably than another prospective employee would be treated in relation to the terms on which employment is offered by reason of the fact that the prospective employee—

(a) has been a health and safety representative or a member of a health and safety committee or has performed the functions of a health and safety representative or of a member of a health and safety committee;

(b) has assisted or given information to an inspector, health and safety representative or health and safety committee;

or

(c) has made a complaint in relation to a matter affecting health, safety or welfare.

Penalty: Division 6 fine.

(3) If in proceedings for an offence against this section all the facts constituting the offence other than the reason for the defendant's action are proved, the onus of proving that the act of discrimination was not actuated by the reason alleged in the charge shall lie on the defendant.

(4) Where a person is convicted of an offence against this section, the court may, in addition to any penalty it may impose, make one or both of the following orders:

- (a) it may order the person to pay within a specified period to the person discriminated against such damages as it thinks fit to compensate that person;
- (b) it may order that an employee be re-instated or re-employed in the employee's former position or, where that position is not reasonably available, in a similar position, on conditions determined by the court, or that a prospective employee be employed in the position for which the prospective employee had applied or a similar position.

(5) This section does not derogate from any right under any other Act or law of a person against whom an offence has been committed.

Assignment of workers during a cessation of work

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

Offences

58. (1) A person who contravenes or fails to comply with a provision of this Act is guilty of an offence.

(2) A person who is guilty of an offence against this Act for which no penalty is specifically provided is liable to a Division 5 fine.

(3) Subject to this Act, offences against this Act are summary offences.

(4) The issuing of a default notice, improvement notice or prohibition notice under this Act does not prevent the institution of proceedings for an offence against this Act in relation to the subject matter of the notice.

(5) Proceedings for an offence against this Act may be brought against—

- (a) an agency or instrumentality of the Crown;
- (b) a person employed by or under the Crown.

(6) Proceedings for an offence against this Act may only be brought by the Minister or by an inspector.

(7) A proceeding for an offence against this Act must be commenced within 2 years after the date on which the offence is alleged to have been committed.

Aggravated offence

59. (1) Where a person contravenes a provision of Part III—

- (a) knowing that the contravention was likely to endanger seriously the health or safety of another;

and

- (b) being recklessly indifferent as to whether the health or safety of another was so endangered,

the person is guilty of an aggravated offence and liable upon conviction to a monetary penalty not exceeding double the monetary penalty that would otherwise apply under Part III for that offence or imprisonment for a term not exceeding 5 years or both.

(2) An offence against this section is a minor indictable offence.

Continuing or repeated offences

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

Penalty: Division 3 fine.

(2) Where a person is convicted of an offence against this Act, the court may, in addition to any penalty it may impose, order that person to take such steps as are specified in the order and within the time specified in the order to comply with this Act.

(3) If the person to whom an order is directed under subsection (2) fails to comply with the order within the time specified in the order, that person is guilty of a further offence.

Penalty: Division 2 fine.

(4) Where in proceedings for an offence against this Act the court is satisfied that the accused—

(a) has previously been convicted of the same offence;

and

(b) has on the present occasion wilfully repeated the act or omission constituting the offence,

the court shall, in addition to any penalty it may impose for the offence, impose a penalty of not more than \$20 000.

Expiation of offences

60a. Where it is alleged that a person has committed an offence against this Act that—

(a) carries a maximum penalty not exceeding a division 5 fine;

and

(b) is prescribed by the regulations for the purposes of this section,

an inspector may cause to be served personally or by post on that person a notice in a form determined by the Director to the effect that the offence may be expiated by payment of the prescribed expiation fee specified in the notice within 28 days of the date of the notice and, if the offence is so expiated, no prosecution of the alleged offence may be commenced.

Offences by bodies corporate

61. (1) Each body corporate carrying on business in the State must appoint one or more responsible officers for the purposes of this section.

(2) A person appointed as a responsible officer under this section must be—

(a) a member of the governing body of the body corporate who resides in the State;

(b) the chief executive officer of the body corporate, if he or she resides in the State;

(c) if no one is eligible for appointment under a preceding paragraph—a senior executive officer of the body corporate who resides in the State;

or

(d) if no one is eligible for appointment under a preceding paragraph—an officer of the body corporate.

(3) A responsible officer must take reasonable steps to ensure compliance by the body corporate of its obligations under this Act.

Penalty—

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

(b) where the court is satisfied that the offence has contributed to the commission of an offence by the body corporate—a fine not exceeding the fine that is prescribed for the offence committed by the body corporate.

(4) If a body corporate fails to appoint one or more responsible officers under this section, each officer of the body corporate will be taken to be a responsible officer for the purposes of subsection (3).

(5) This section does not derogate from any other rule of law relating to the duties of officers of bodies corporate.

Health and safety in the public sector

62. The chief executive officer of each administrative unit under the *Government Management and Employment Act, 1985*, must appoint a person to be responsible for the implementation of the requirements of this Act in that administrative unit.

Code of practice

63. (1) The Minister may, on the recommendation of the Commission, approve a code of practice for the purposes of this Act.

(2) A code of practice may incorporate, adopt or apply, with or without modification, any other document prepared or published by any body or authority as in force at the time that the code of practice is issued or as in force from time to time.

(3) The Commission should in the preparation of a code of practice relating to the health, safety or welfare of persons employed in schools consult with, and take into account the recommendations of—

(a) the Director-General of Education;

(b) the Independent Schools Board;

and

(c) the South Australian Commission for Catholic Schools.

(4) The Minister may, on the recommendation of the Commission—

(a) approve the revision of the whole or a part of a code of practice;

or

(b) revoke a code of practice.

(5) The Minister shall give notice in the *Gazette* of—

(a) the approval of a code of practice;

(b) the approval of a revision of the whole or a part of a code of practice;

or

(c) the revocation of a code of practice.

(6) The Minister shall cause a copy of—

(a) every approved code of practice;

(b) where an approved code of practice has been revised and that revision has been approved—every approved code of practice as so revised;

and

(c) where an approved code of practice has incorporated, adopted or applied any document,

every such document, to be made available for inspection by members of the public without charge.

(7) An approved code of practice and any approved revision of a code of practice shall come into operation on the day on which the notice of approval is published in the *Gazette* or on such later day as may be specified in the notice.

(8) An approved code of practice or the revision of a code of practice is subject to disallowance by Parliament.

(9) Every approved code of practice or revision must be laid before both Houses of Parliament within 14 days of notice of its approval being published in the *Gazette* if Parliament is in session or, if Parliament is not then in session, within 14 days after the commencement of the next session of Parliament.

(10) If either House of Parliament passes a resolution disallowing an approved code of practice or the revision of a code of practice, then the code of practice or revision ceases to have effect.

(11) A resolution is not effective for the purposes of subsection (10) unless passed in pursuance of a notice of motion given within 14 sitting days (which need not all fall in the same session of Parliament) after the day on which the code of practice was laid before the House.

Use of codes of practice in proceedings

63a. Where in proceedings for an offence against this Act it is proved that the defendant failed to observe a provision of an approved code of practice dealing with the matter in respect of which the offence is alleged to have been committed, the defendant is, in the absence of proof to the contrary, to be taken to have failed to exercise the standard of care required by that section.

Evidentiary provision

64. (1) In proceedings for an offence against this Act, an allegation in the complaint that, at a specified time—

(a) a person was an employer at a specified workplace;

(b) a person was an occupier of a specified workplace;

(c) a notice was given under this Act;

(d) a notice required to be given under the regulations has not been given;

(e) a prescribed fee has not been paid;

or

(f) a person was an inspector,
shall, in the absence of proof to the contrary, be proof of the matter so alleged.

(2) Nothing said or done during the course of conciliation proceedings under this Act shall subsequently be given in evidence in other proceedings under this Act.

(3) In any legal proceedings, evidence of the contents of an approved code of practice, or of a document adopted or applied by, or referred to in, an approved code of practice or a regulation, may be given by production of a document purporting to be certified by or on behalf of the Minister as a true copy of the approved code of practice or other document.

Annual report

65. (1) The Commission shall, on or before the thirty-first day of December in each year, deliver to the Minister an annual report containing a report on the operations of the Commission and the operation of this Act during the financial year ending on the thirtieth day of June in that year, and the report must include, in respect of that financial year—

- (a) a list of recommendations (if any) made to the Minister by the Commission in respect of the operation of any legislation or for the taking of legislative action and details of the action taken by the Minister in response to those recommendations;
 - (b) a report on the work of occupational health and safety inspectors;
 - (c) a report on the work of health and safety representatives;
 - (d) a summary of statistical trends disclosed by the analysis of accident and injury reports;
 - (e) a list of exemptions from the provision of this Act made pursuant to regulation;
 - (f) a report on the prosecutions brought under this Act identifying persons who have been convicted of offences against this Act (except that a person must not be identified if to do so would be in contravention of a suppression order);
 - (g) a report on the various standards of occupational health and safety in industry, identifying industries in relation to which the standard was particularly high or particularly low;
- and
- (h) a general summary of the standards of occupational health, safety and welfare in this State.

(2) The Director of the Department of Labour shall, on or before the thirty-first day of December in each year, deliver to the Minister an annual report on the administration and enforcement of this Act during the financial year ending on the thirtieth day of June in that year.

(3) The Minister shall, within 12 sitting days after the receipt of an annual report under this section, cause copies of the report to be laid before each House of Parliament.

Modifications of regulations

66. (1) Where—

- (a) the occupier of a workplace or an employer applies to the Chief Inspector under this section for the modification of the requirements of a regulation as they apply to that occupier or employer;

and

- (b) the Chief Inspector is satisfied that a modification of the regulations would not adversely affect the health, safety or welfare of any employee,

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

- (2) The occupier or employer shall—

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

and

- (b) provide a copy of the notice to any health and safety representative who represents employees at that workplace.

(3) The Chief Inspector shall send to the Commission a copy of every notice issued under this section.

(4) The Chief Inspector has an absolute discretion to vary or revoke a notice issued under this section.

(5) A health and safety representative or a registered association representing one or more employees at a workplace that is affected by the notice may apply to the President of the Industrial Court for a review by a review committee of a notice issued under this section.

(6) Pending the determination of a review under this section, the operation of the notice to which the review relates shall continue.

- (7) At the conclusion of a review under this section, a review committee may—

- (a) confirm the notice to which the review relates;
(b) confirm the notice with such modifications as it thinks fit;

or

- (c) cancel the notice.

Exemption from Act

67. (1) Where—

- (a) an employer applies to the Commission under this section for an exemption from all or any of the provisions of this Act;

and

- (b) the Commission is satisfied—

- (i) that the granting of the exemption would not adversely affect the health, safety or welfare of any employee;

- (ii) that it is reasonable to grant such an exemption,

the Commission may, by unanimous decision, by notice in writing to the employer, grant an exemption under this section.

(2) A notice under subsection (1) may exempt—

- (a) the employer;
 - (b) specified operations carried on by the employer;
- or
- (c) a specified workplace under the management of the employer,

from all or any of the provisions of this Act.

(3) Before deciding on whether to grant an exemption under this section the Commission shall, so far as is reasonably practicable, consult with—

- (a) any registered association that represents one or more employees who might be affected by the granting of the exemption;
- and
- (b) any registered association representing employers that might have an interest in the application.

(4) An exemption under this section may be granted subject to such limitations as the Commissioner thinks fit.

(5) The Commission has an absolute discretion to revoke an exemption granted under this section.

Registration of employers

67a. (1) Subject to subsection (2), a person who is required to be registered as an employer under the *Workers Rehabilitation and Compensation Act, 1986*, is also required to be registered under this Act.

(2) A person is not required to be registered if the person is exempt from the obligation to be registered by the regulations.

(3) The Workers Rehabilitation and Compensation Corporation will undertake registrations under this section in conjunction with the registration of employers under the *Workers Rehabilitation and Compensation Act, 1986*.

(4) A periodical fee is payable in relation to a registration under this section.

(5) The fee referred to in subsection (4) will be—

- (a) calculated in the prescribed manner;
- and
- (b) payable to the Workers Rehabilitation and Compensation Corporation in accordance with the regulations.

(6) If a person fails to pay a fee, or the full amount of a fee, in accordance with the regulations, the Workers Rehabilitation and Compensation Corporation may recover the unpaid amount as if it were unpaid levy under Part V of the *Workers Rehabilitation and Compensation Act, 1986*.

(7) Subject to subsection (8), the Workers Rehabilitation and Compensation Corporation will, in accordance with guidelines established by the Treasurer, pay the fees collected under this section to the Department of Labour.

(8) The Workers Rehabilitation and Compensation Corporation may deduct from any amount payable under subsection (7) any costs reasonably incurred by it in undertaking registrations and collecting fees under this section.

(9) The Department of Labour and the Commission are entitled to information provided to the Workers Rehabilitation and Compensation Corporation for the purposes of this section (and section 112 of the *Workers Rehabilitation and Compensation Act, 1986*, does not apply in relation to the disclosure of that information to the Department or to the Commission).

(10) A person who fails to comply with this section is guilty of an offence.

Penalty: Division 6 fine.

(11) A person who was, immediately before the commencement of this section, the occupier of a workplace registered under the *Occupational Health, Safety and Welfare (Registration of Workplaces) Regulations, 1987*, is, on written application to the Director of the Department of Labour, entitled to a refund of a portion of the registration fee paid under those regulations, the portion being so much of the fee that, immediately before the commencement of this section, represented the unexpired term of registration.

Consultation on regulations

68. The Minister shall consult with the Commission on any regulations proposed to be made before those regulations are made.

Regulations

69. (1) The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.

(2) Without limiting the generality of subsection (1), those regulations may be made with respect to any of the matters specified in the first schedule.

(3) A regulation made under this Act in relation to the registration or licensing of any work, plant, process, substance or workplace may also—

- (a) prohibit any activity unless carried on in pursuance of a licence or at registered premises or by means of registered equipment;
- (b) prescribe the persons who may apply for registration or a licence;
- (c) prescribe the manner and form of applications for registration or for a licence;
- (d) prescribe fees for registration or for the issuing or holding of a licence;
- (e) prescribe the terms and conditions of registration or for the holding of a licence;
- (f) provide for the variation by the Director of the Department of Labour of terms and conditions imposed under paragraph (e);
- (g) prescribe the circumstances in which registration or the holding of a licence may be cancelled or suspended;
- (h) prescribe the manner of application for the renewal or transfer of registration or of a licence.

(4) A right of appeal to the Industrial Court lies against—

- (a) a refusal to grant a registration or licence under the regulations;
- (b) a decision of the Director of the Department of Labour to vary the terms or conditions of registration or for holding a licence;

or

- (c) a decision to cancel or suspend a registration or licence.

(5) An appeal must be instituted within one month of the date of the decision appealed against but the Industrial Court may, if it thinks fit, dispense with the requirement that the appeal should be instituted within that time.

(6) The Industrial Court may on the hearing of an appeal, taking into account what is just and reasonable in the circumstances, exercise one or more of the following powers—

- (a) affirm, vary or quash the decision appealed against and make any incidental or other order that may be just and reasonable in the circumstances;
- (b) remit the decision for reconsideration;
- (c) make any order as to costs.

(7) For the purposes of an appeal under this section, the Industrial Court shall be constituted of a single Judge.

(8) A right of appeal to the Full Industrial Court lies, with leave of the Full Industrial Court, from a decision of a single Judge under subsection (6).

(8a) A regulation made under this Act in relation to the notification of work-related injuries may provide that notice of prescribed classes of injury may be given to the Workers Rehabilitation and Compensation Corporation in conjunction with the provision of information relating to claims for compensation under the *Workers Rehabilitation and Compensation Act, 1986*.

(8b) The Department of Labour and the Commission are entitled to information relating to work-related injuries obtained by the Workers Rehabilitation and Compensation Corporation under subsection (8a) (and section 112 of the *Workers Rehabilitation and Compensation Act, 1986*, does not apply in relation to the disclosure of that information to the Department or to the Commission).

(8c) The Workers Rehabilitation and Compensation Corporation is entitled to charge a fee, set by the Workers Rehabilitation and Compensation Corporation after consultation with the Treasurer, for the provision of information under subsection (8b).

(9) Regulations made under this Act may incorporate, adopt, apply or make prescriptions by reference to, with or without modification—

- (a) any code of practice issued by the Commission;
- (b) any other document prepared or published by any body or authority as in force at the time the regulations are made or as in force from time to time.

(10) The Minister shall cause a copy of any document that has been incorporated, adopted or applied by regulations made under this Act or by reference to which a prescription is made by those regulations to be made available for inspection by members of the public without charge.

(11) Regulations made under this Act—

- (a) may be of general or limited application;
 - (b) may leave any matter or thing to be determined, dispensed with, regulated or prohibited according to the discretion of the Director of the Department of Labour or the Chief Inspector, either generally or in a particular case or class of case;
 - (c) may make different prescriptions according to prescribed circumstances;
- and
- (d) may differentiate between various classes of persons.

Repeal

70. The *Industrial Safety, Health and Welfare Act, 1972*, is repealed.

Amendment of certain Acts

71. (1) The *Industrial Conciliation and Arbitration Act, 1972*, is amended as indicated in the first Part of the third schedule.

(2) The *Mines and Works Inspection Act, 1920*, is amended as indicated in the second Part of the third schedule.

FIRST SCHEDULE

REGULATIONS

1. Health, safety or welfare standards that must be complied with—
 - (i) at any workplace;
 - (ii) in the performance of any work;
 - (iii) in the use, cleaning, maintenance or transportation of any plant;
 - (iv) in the use, handling, processing, storing, transporting or disposal of any substance;
 - (v) in the design, manufacture, importing or supplying of any plant;
 or
 - (vi) in the manufacture or importing of any substance.
2. The safeguarding, siting, installing, testing, altering, repairing, maintaining or dismantling of any plant.
3. The testing, analysis, labelling or marking of any substance.
- 3a. The procedures to be followed in respect of the registration of any person under this Act.
- 3b. The information to be provided by persons who are required to be registered under this Act.
4. The registration or licensing of any work, plant, process, substance or workplace by the Director of the Department of Labour or any other prescribed person or authority.
5. The steps to be taken on the occurrence of any work-related injury.
6. The notification of work-related injuries.
7. The special monitoring of the health and welfare of employees in specified classes of work.
8. The notification of accidents and dangerous occurrences at any workplace.
9. The issuing of certificates of competency or provisional certificates of competency for persons engaged in prescribed work and for the duration, variation, suspension or cancellation of such certificates.
10. The prohibition of the carrying on of prescribed activities at workplaces or the performance of prescribed work except by or under the supervision of persons with prescribed qualifications, training or experience.
11. The supply, use, testing and maintenance of clothing and equipment for occupational health, safety or welfare purposes.
12. Fire-safety rules and procedures and the provision and maintenance of fire protection equipment.
13. The appointment of persons who are to be responsible for the supervision of occupational safety in prescribed circumstances or industries.
14. The form and use of scaffolding, form work, false work and related equipment.
15. The carriage and handling of cash.
16. The provision of medical, nursing or first aid facilities at workplaces and the standards for such facilities.
17. The medical examination of employees.
18. The employment of young persons.
19. The safety of persons in isolated or remote areas.
20. Standards for the manual handling of loads by persons at work.
21. The safety of persons in the vicinity of any workplace.
22. The minimum standards that must be observed in providing information, instruction and training for the health and safety of employees whose native language is not English and who are not reasonably fluent in English.
23. The giving of notices, in specified circumstances, to the Minister, an inspector or other prescribed person or authority.
24. The removal of asbestos from any place, the disposal of asbestos or the treatment of asbestos in any place.
25. The keeping and provision of records, returns and information for the purposes of this Act (including records relating to accidents and dangerous occurrences that occur at work and work-related injuries suffered by employees).
26. Procedures that are to be carried out on inspections under this Act.
27. Fees (including differential and periodic fees) for the purposes of this Act.
28. Forms for the purposes of this Act.
29. The service of notices under this Act.
30. The recovery of fees under this Act.
31. The exemption, either absolutely or subject to prescribed limitations or conditions, of persons or work or classes of persons or work from any provision of this Act.
32. In relation to penalties for breaches of the regulations—
 - (a) in the case of regulations prescribing standards for health or safety at work—penalties not exceeding a Division 2 fine;
 - (b) in any other case—penalties not exceeding a Division 6 fine.

SECOND SCHEDULE
TRANSITIONAL PROVISIONS**Interpretation**

1. In this schedule—

“the repealed Act” means the *Industrial Safety, Health and Welfare Act, 1972*, repealed by this Act.

Chief Inspector

2. (1) The person who was, immediately before the commencement of this Act, Chief Inspector of Industrial Safety shall be deemed to have been appointed as Chief Inspector under this Act.

(2) A reference in any Act or regulation to the Chief Inspector of Industrial Safety shall be deemed to be a reference to the Chief Inspector under this Act.

Industrial premises

3. Any industrial premises that were, immediately before the commencement of this Act, registered under the repealed Act shall, on the commencement of this Act, be deemed to have been registered under the regulations.

Construction work

4. A notice given under section 26 of the repealed Act has effect in relation to construction work commenced after the commencement of this Act as if given under this Act.

Modification of regulations

5. A notice given under section 38 of the repealed Act and in force immediately before the commencement of this Act continues in force as if it had been given under this Act.

Special provisions relating to plant

6. (1) It is a defence in proceedings for an offence against this Act in relation to failing to use safe plant for the defendant to prove—

(a) that the plant was manufactured before the commencement of this Act;

(b) the plant was being used for pastoral or agricultural purposes;

and

(c) that its use would not have been in breach of the repealed Act if the provisions of that Act as they applied immediately before its repeal were still in force.

(2) The defence provided by subclause (1) is not available in relation to the use of unsafe plant by an employee.

(3) This clause expires on the fifth anniversary of the commencement of this schedule.

Acts Interpretation Act

7. The *Acts Interpretation Act, 1915*, shall, except to the extent of any inconsistency with the provisions of this schedule, apply to the repeal of the *Industrial Safety, Health and Welfare Act, 1972*.

THIRD SCHEDULE
AMENDMENT OF CERTAIN ACTS

PART I

AMENDMENT OF INDUSTRIAL CONCILIATION AND ARBITRATION ACT, 1972

Provision Affected	How Affected
Section 157	By striking out paragraph (b) of subsection (1).

PART II

AMENDMENT OF MINES AND WORKS INSPECTION ACT, 1920

Provision Affected	How Affected
Section 9	After subsection (2) insert the following subsection: (3) This section does not apply in relation to a report made pursuant to the <i>Occupational Health, Safety and Welfare Act, 1986</i> .
Section 18	After subsection (2) insert the following subsection: (2a) Regulations made under this Act may incorporate, adopt, apply or make prescriptions by reference to, with or without modification— (a) any code of practice issued by the South Australian Occupational Health and Safety Commission; (b) any other document prepared or published by any body or authority as in force at the time that the regulations are made or as in force from time to time.

APPENDIX

Legislative History

The *Occupational Health, Safety and Welfare Act Amendment Act, 1989*, provides for a transitional provision *see s. 12*.

Section 4(1):	definition of "work group" amended by 67, 1990, s. 3(a)
Section 8(1):	definition of "workplace" substituted by 67, 1990, s. 3(b)
Section 8(3):	substituted by 24, 1989, s. 3(a); amended by 67, 1990, s. 4
Section 9:	repealed by 24, 1989, s. 3(b)
Section 9(2):	substituted by 24, 1989, s. 4(a)
Section 9(7):	amended by 24, 1989, 4(b)
Section 10:	repealed by 24, 1989, s. 4(c)
Section 11(1):	substituted by 24, 1989, s. 5
Section 11(1)(a):	amended by 24, 1989, s. 6(a); 67, 1990, s. 5
Section 11(1a):	repealed by 24, 1989, s. 6(b)
Section 11(3):	inserted by 24, 1989, s. 6(c)
Section 17a:	substituted by 24, 1989, s. 6(d)
Section 18(1):	inserted by 24, 1989, s. 7
Section 18(2):	amended by 24, 1989, s. 8(a)
Section 18(3):	substituted by 24, 1989, s. 8(b)
Section 19(2):	repealed by 24, 1989, s. 8(b)
Section 19(3):	repealed by 67, 1990, s. 6(a)
Section 20(1):	amended by 67, 1990, s. 6(b), (c)
Section 20(2):	amended by 67, 1990, s. 7(a)
Section 23a:	repealed by 67, 1990, s. 7(b)
Section 24(2a):	inserted by 67, 1990, s. 8
Section 24(4):	inserted by 67, 1990, s. 9(a)
Section 26a:	inserted by 67, 1990, s. 9(b)
Section 27:	inserted by 67, 1990, s. 10
Section 28(2):	substituted by 67, 1990, s. 11(a)
Section 28(3):	substituted by 67, 1990, s. 11(b)
Section 28(4):	amended by 67, 1990, s. 11(c)
Section 28(6):	amended by 67, 1990, s. 11(d)
Section 28(8):	substituted by 67, 1990, s. 11(e)
Section 28(9):	amended by 67, 1990, s. 11(f)
Section 29(1):	substituted by 67, 1990, s. 12
Section 30(1):	amended by 67, 1990, s. 13(a)
Section 30(2):	amended by 67, 1990, s. 13(b), (c)
Section 30(3):	substituted by 67, 1990, s. 13(d)
Section 30(4):	amended by 67, 1990, s. 13(e), (f)
Section 31(1):	substituted by 67, 1990, s. 14(a)
Section 31(4):	substituted by 67, 1990, s. 14(b)
Section 31(6):	amended by 67, 1990, s. 14(c)
Section 31(12):	amended by 67, 1990, s. 14(d)
Section 32(1):	amended by 67, 1990, s. 15(a)-(e)
Section 32(3):	amended by 67, 1990, s. 15(f), (g)
Section 32(5):	amended by 67, 1990, s. 15(h)
Section 33(1):	amended by 67, 1990, s. 16
Section 34(1):	substituted by 67, 1990, s. 17(a)
Section 34(3):	amended by 67, 1990, s. 17(b)
Section 34(4):	amended by 67, 1990, s. 17(c)
Section 35(2):	amended by 67, 1990, s. 18(a)
Section 35(3):	amended by 67, 1990, s. 18(b)
Section 35(5):	amended by 67, 1990, s. 18(c)
Section 35(8):	amended by 67, 1990, s. 18(d)
Section 35(9):	amended by 67, 1990, s. 18(e)
Section 35(12):	substituted by 67, 1990, s. 18(f)
Section 36(1):	amended by 67, 1990, s. 19(a)
Section 36(2):	amended by 67, 1990, s. 19(b)
Section 36(4):	amended by 67, 1990, s. 19(c)
Section 37(4):	amended by 67, 1990, s. 20
Section 38(1a):	inserted by 67, 1990, s. 21(a)
Section 38(10):	amended by 67, 1990, s. 21(b)
Section 39(1):	amended by 67, 1990, s. 22(a)
Section 39(2):	amended by 67, 1990, s. 22(b)
Section 41(2):	substituted by 67, 1990, s. 23
Section 42(1):	amended by 67, 1990, s. 24(a)
Section 42(5):	amended by 67, 1990, s. 24(b)
Section 43(2):	amended by 67, 1990, s. 25
Section 60a:	inserted by 67, 1990, s. 26
Section 61:	substituted by 67, 1990, s. 27
Section 63a:	inserted by 67, 1990, s. 28
Section 64(3):	inserted by 67, 1990, s. 29
Section 66(4):	amended by 67, 1990, s. 30
Section 67a:	inserted by 24, 1989, s. 9
Section 69(8a) - (8c):	inserted by 24, 1989, s. 10
First schedule	
Items 3a and 3b:	inserted by 24, 1989, s. 11