

Western Australia

# **Occupational Safety and Health Act 1984**

**Reprinted as at 22 March 1999**



Western Australia

## Occupational Safety and Health Act 1984

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Western Australia

## **Occupational Safety and Health Act 1984**

**An Act to promote and improve standards for occupational safety and health, to establish the WorkSafe Western Australia Commission, to facilitate the co-ordination of the administration of the laws relating to occupational safety and health and for incidental and other purposes.**

*[Long title amended by No. 30 of 1995 s.4.]*

## **Part I — Preliminary**

*[Heading inserted by No. 43 of 1987 s.4.]*

### **1. Short title**

This Act may be cited as the *Occupational Safety and Health Act 1984*<sup>1</sup>.

*[Section 1 amended by No. 30 of 1995 s.5.]*

### **2. Commencement**

The provisions of this Act shall come into operation on such day or days as is or are respectively fixed by proclamation<sup>1</sup>.

### **3. Interpretation**

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

“**appointed member**” means a member of the Commission referred to in section 6(2)(a) or (d);

“**apprentice**” means an apprentice under the *Industrial Training Act 1975*;

“**chairperson**” means the chairperson of the Commission;

“**code of practice**” means a code of practice approved by the Minister under Part VIII;

“**Commission**” means the WorkSafe Western Australia Commission established under this Act;

“**Commissioner**” means the person holding office as WorkSafe Western Australia Commissioner under section 9;

“**department**” means the department of the Public Service of the State principally assisting the Minister in the administration of this Act;

“**employee**” means —

- (a) a person by whom work is done under a contract of employment; or
- (b) an apprentice or industrial trainee;



**“employer”** means —

- (a) a person by whom an employee is employed under a contract of employment; and
- (b) in relation to an apprentice, or industrial trainee, the person by whom the apprentice or industrial trainee is employed under an apprenticeship or industrial training agreement;

**“hazard”**, in relation to a person, means anything that may result in —

- (a) injury to the person; or
- (b) harm to the health of the person;

**“improvement notice”** means an improvement notice issued under Part VI;

**“industrial trainee”** means an industrial trainee under the *Industrial Training Act 1975*;

**“inspector”** means an inspector appointed under Part V;

**“plant”** includes any machinery, equipment, appliance, implement, or tool and any component or fitting thereof or accessory thereto;

**“practicable”** means reasonably practicable having regard, where the context permits, to —

- (a) the severity of any potential injury or harm to health that may be involved, and the degree of risk of it occurring;
- (b) the state of knowledge about —
  - (i) the injury or harm to health referred to in paragraph (a);
  - (ii) the risk of that injury or harm to health occurring; and
  - (iii) means of removing or mitigating the risk or mitigating the potential injury or harm to health;

and

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(c) the availability, suitability, and cost of the means referred to in paragraph (b)(iii);

**“prescribed law”** means a law prescribed for the purposes of section 14(1)(b);

**“prohibition notice”** means a prohibition notice issued under Part VI;

**“risk”**, in relation to any injury or harm, means the probability of that injury or harm occurring;

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

**“safety and health magistrate”** means a person holding office as a safety and health magistrate under section 51B;

**“safety and health representative”** means a safety and health representative elected under Part IV;

**“self-employed person”** means a person who works for gain or reward otherwise than under a contract of employment or an apprenticeship or industrial training agreement, whether or not he employs any other person;

**“supply”**, in relation to any plant or substance, includes supply and re-supply by way of sale, exchange, lease, hire, or hire-purchase, whether as principal or agent;

**“trade union”** means —

(a) an organization registered under section 53 of the *Industrial Relations Act 1979*; or

(b) an organization registered under the *Industrial Relations Act 1988* of the Parliament of the Commonwealth and having employees as its members, or a branch of any such organization;

**“transferred law”** means a law or a provision of a law transferred to the administration of the Minister pursuant to an order under this Act;

**“workplace”** means a place, whether or not in an aircraft, ship, vehicle, building, or other structure, where employees or

self-employed persons work or are likely to be in the course of their work.

- (2) Anything that, under this Act, is required to be served on, or otherwise done in relation to, an employer in relation to a workplace or a matter related to a workplace, is deemed to have been so served or done if it is served on, or done in relation to, a person at the workplace who has or reasonably appears to have responsibility for the management or control of the workplace.
- (3) For the purposes of sections 19(7), 20(5), 21(3), 22(5), 23(5) and 23A(3), a contravention causes serious harm to a person if it causes any bodily injury to the person, or causes the person to have a disease, of such a nature as to —
  - (a) endanger, or be likely to endanger, the person's life; or
  - (b) result, or be likely to result, in permanent injury or harm to the person's health.

*[Section 3 amended by No. 43 of 1987 s.5; No. 30 of 1995 s.6; No. 79 of 1995 s.67(5).]*

*[3A. Repealed by No. 30 of 1995 s.7.]*

#### **4. Application of this Act**

- (1) 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.
- (2) Subject to this section and except as may be otherwise expressly provided by Parliament, this Act does not apply to or in relation to any workplace that is, or at which work is carried out on, a mine, petroleum well or petroleum pipeline to which the *Mining Act 1978*, the *Mines Safety and Inspection Act 1994*, the *Petroleum Act 1967*, the *Petroleum (Submerged Lands) Act 1982* or the *Petroleum Pipelines Act 1969*, applies.
  - (2a) Subsection (2) does not prevent a provision of Part II from applying in relation to a workplace that is, or at which work is carried out on, a mine to which the *Mining Act 1978*, or the *Mines Safety and Inspection Act 1994*, applies.

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- (3) The Minister and the Minister for the time being administering the Act referred to in subsection (2) that is concerned may, by instrument in writing, jointly declare that this Act, or such provision of or under this Act as is specified in the instrument shall, for such period as is described in the instrument, apply to or in relation to a workplace referred to in subsection (2), or any part of such workplace that is specified in the instrument.
- (4) On the service of a copy of the instrument mentioned in subsection (3) on an employer on whom a duty under this Act would devolve if this Act applied in accordance with the instrument, this Act shall so apply in relation to the workplace or part of a workplace concerned to the exclusion of any inconsistent provision of or under the Act referred to in subsection (2) that is concerned.
- (5) A copy of each instrument under subsection (3) shall be published in the *Gazette* as soon as practicable after the instrument is made and before it is so published a person, other than the employer on whom a copy of the relevant instrument was served under subsection (4), in relation to whom a provision of or under this Act applies by reason of subsection (4) is not guilty of an offence against a provision of or under this Act if he proves that he did not know, and could not reasonably be expected to have known, of the application in relation to him of the provision.

*[Section 4 inserted by No. 43 of 1987 s.7; amended by No. 84 of 1990 s.2; No. 62 of 1994 s.109.]*

**5. Objects**

The objects of this Act are —

- (a) to promote and secure the safety and health of persons at work;
- (b) to protect persons at work against hazards;
- (c) to assist in securing safe and hygienic work environments;

- (d) to reduce, eliminate and control the hazards to which persons are exposed at work;
- (e) to foster co-operation and consultation between and to provide for the participation of employers and employees and associations representing employers and employees in the formulation and implementation of safety and health standards to current levels of technical knowledge and development;
- (f) to provide for formulation of policies and for the co-ordination of the administration of laws relating to occupational safety and health;
- (g) to promote education and community awareness on matters relating to occupational safety and health.

*[Section 5 amended by No. 43 of 1987 s.8; No. 30 of 1995 s.47.]*

## **Part II — WorkSafe Western Australia Commission**

*[Heading inserted by No. 43 of 1987 s.9; amended by  
No. 30 of 1995 s.47.]*

### **6. The Commission**

- (1) There shall be a WorkSafe Western Australia Commission.
- (2) The Commission shall consist of —
  - (a) a person nominated by the Minister and appointed by the Governor as chairperson;
  - (b) the Commissioner;
  - (c) 2 officers of the Public Service nominated in writing by the Minister; and
  - (d) 9 persons appointed by the Governor of whom —
    - (i) 3 shall be persons nominated for appointment by the body known as the Chamber of Commerce and Industry of Western Australia (Inc);
    - (ii) 3 shall be persons nominated for appointment by the body known as The Trades and Labor Council of Western Australia; and
    - (iii) 3 shall be persons having knowledge of or experience in occupational safety and health who shall be nominated for appointment by the Minister after consultation between the Minister and the bodies referred to in subparagraphs (i) and (ii).
- (3) Where any of the bodies referred to in subsection (2)(d)(i) or (ii) fails to make a nomination within 60 days after being requested in writing by the Minister to do so the Governor may appoint any person considered suitable and any person so appointed shall be deemed to have been nominated pursuant to subsection (2)(d)(i) or (ii), as the case may be.

- (4) A nomination for the purposes of subsection (2)(c) may be made from time to time, may be made by reference to the holder of a specified office and may be expressed to operate for a period or in such circumstances as are specified in the instrument of nomination.
- (5) In addition to the name mentioned in subsection (1), the Commission may use, and operate under, the name “WorkSafe W A”.
- (6) A person other than the Commission who uses or operates under the name mentioned in subsection (1) or (5), or any name that is so similar that it is likely to be misunderstood as referring to the Commission, commits an offence.
- (7) Nothing in subsection (6) prevents the department of the Public Service principally assisting the Minister in the administration of this Act from using or operating under the name of “WorkSafe Western Australia” or a similar name if that designation is given to it under section 35 of the *Public Sector Management Act 1994*.

*[Section 6 amended by No. 30 of 1995 s.8.]*

**6A. Deputy chairperson**

- (1) The Minister shall appoint one of the members of the Commission to be deputy chairperson of the Commission.
- (2) During any vacancy in the office of chairperson or while the chairperson is unable to act by reason of sickness, absence or other cause, the deputy chairperson shall perform the functions of the chairperson.
- (3) No act or omission of the deputy chairperson acting as the chairperson shall be questioned on the ground that the occasion for so acting had not arisen or had ceased.

*[Section 6A inserted by No. 30 of 1995 s.9.]*

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**7. Acting members**

- (1) If —
- (a) an appointed member is unable to act by reason of sickness, absence or other cause; or
  - (b) the office of an appointed member is vacant and has not been filled in accordance with this Act,

the Minister may appoint an eligible person to act temporarily in the place of that appointed member, and while so acting according to the tenor of the appointment that other person has all of the functions, powers and immunities of that appointed member.

- (2) Where an appointed member who is deputy chairperson is performing the functions of the chairperson, the Minister may, under subsection (1), appoint another eligible person to act in the place of that appointed member.
- (3) No act or omission of a person acting in the place of another under this section is to be questioned on the ground that the occasion for the appointment or so acting had not arisen or had ceased.
- (4) The appointment of a person as an acting member may be terminated at any time by the Minister.

*[Section 7 inserted by No. 30 of 1995 s.10.]*

**8. Terms and conditions of appointed members**

- (1) An appointed member shall hold office for such term not exceeding 3 years as is specified in the instrument of his appointment and is eligible for re-appointment.
- (2) An appointed member other than a person who is an officer of the Public Service of the State is entitled to such remuneration and allowances as are determined by the Minister on the recommendation of the Public Service Commissioner<sup>2</sup>.



**9. WorkSafe Western Australia Commissioner**

- (1) The Governor shall appoint a person to be WorkSafe Western Australia Commissioner.
- (2) The Commissioner shall be appointed for such term not exceeding 5 years as is specified in the instrument of his appointment and on the expiration of his term is eligible for re-appointment.
- (3) Subject to the *Salaries and Allowances Act 1975*, the Commissioner is entitled to such conditions of service as are determined by the Minister from time to time on the recommendation of the Public Service Commissioner <sup>2</sup>.
- (4) If a person appointed to be Commissioner was immediately before that appointment an officer of the Public Service of the State he shall notwithstanding that appointment retain his existing and accruing rights on his appointment as Commissioner.
- (5) If a person appointed to be Commissioner was immediately before that appointment a public service officer within the meaning of the *Public Sector Management Act 1994*, he is entitled upon resigning his office as Commissioner or upon ceasing to be Commissioner to be appointed to an office in the Public Service of the State not lower in status than the office he so occupied immediately before his appointment as Commissioner.
- (6) The Commissioner shall not engage in paid employment outside his duties and functions under this Act without first obtaining the approval in writing of the Minister.
- [(7) *repealed*]
- (8) In addition to the name mentioned in subsection (1), the Commissioner may use, and operate under, the name "WorkSafe W A Commissioner".

*[Section 9 amended by No. 43 of 1987 s.10; No. 55 of 1987 s.4; No. 32 of 1994 s.19; No. 30 of 1995 ss.11 and 47.]*

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**10. Vacation of office**

The office of Commissioner or of an appointed member becomes vacant if —

- (a) his term of office expires;
- (b) he becomes permanently incapable of performing his duties;
- (c) he resigns his office by written notice addressed to the Minister;
- (d) he is an undischarged bankrupt or a person whose property is subject to an order or arrangement under the laws relating to bankruptcy;
- (e) he is removed from office by the Governor on the grounds of neglect of duty, his behaviour or incompetence;
- (f) he is absent without leave of the Minister from 3 consecutive meetings of the Commission;
- (g) being an appointed member appointed pursuant to section 6(2)(d)(i) or (ii) his nomination is revoked; or
- (h) he dies.

**11. Leave of absence**

The Minister may grant leave of absence to an appointed member on such terms and conditions as the Minister determines.

**12. Casual vacancies**

Where an office of appointed member becomes vacant otherwise than by effluxion of time a person appointed to the vacancy shall hold office only for the balance of the term of the person whose vacancy he fills.

**13. Meetings of the Commission**

- (1) The chairperson may at any time and shall when so requested by the Minister or by not less than 5 members of the Commission

convene a meeting of the Commission to be held at a time and place to be determined by the chairperson.

- (2) The Commission shall meet at least 6 times a year at intervals of not more than 3 months.
- (3) The chairperson shall preside at any meeting of the Commission at which he is present.
- (4) If both the chairperson and the deputy chairperson are absent from a meeting of the Commission, the members present shall elect by secret ballot one of their number to preside at that meeting and that member shall have, in addition to the powers of a member of the Commission, the powers of the chairperson under this section.
- (5) At a meeting of the Commission 7 members constitute a quorum.
- (6) Subject to subsection (6a), at a meeting of the Commission —
  - (a) only members appointed under section 6(2)(d) are entitled to vote; and
  - (b) where any question requiring a vote arises the question shall be decided by a majority of the votes of the members appointed under section 6(2)(d) if, and only if, not less than 6 of those members also constitute such majority.
- (6a) If —
  - (a) on a vote at a meeting of the Commission, a majority of the votes of members appointed under section 6(2)(d) is constituted by 5 of those members; and
  - (b) on a vote at a subsequent meeting of the Commission on the same question, a majority of the votes is constituted by 5 of those members,

the chairperson may, at that subsequent meeting, cast a vote to be included in the majority vote.

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- (7) Subject to the presence of a quorum the Commission may act notwithstanding any vacancy in its membership.
- (8) A member of the Commission who has a pecuniary interest whether direct or indirect in any matter to be considered by the Commission shall declare the nature of that interest at every meeting at which the matter is considered.
- (9) Subject to this Act, the Commission may determine its own procedures.
- (10) It is the duty of the Commission to work for the attainment of the objects of this Act by achieving a consensus, as far as this is practicable, among its members.

*[Section 13 amended by No. 30 of 1995 s.12.]*

**14. Functions of the Commission**

- (1) The functions of the Commission are —
  - (a) to inquire into and report to the Minister upon any matters referred to it by the Minister;
  - (b) to make recommendations to the Minister with respect to —
    - (i) this Act;
    - (ii) any law or provision of a law, relating to occupational safety and health that is administered by the Minister and any law or provision of a law relating to occupational safety and health that is prescribed for the purposes of this paragraph; and
    - (iii) subsidiary legislation, guidelines and codes of practice proposed to be made under or for the purposes of any prescribed law;
  - (c) to examine, review and make recommendations to the Minister in relation to existing and proposed registration or licensing schemes relating to occupational safety and health;

- (d) to provide advice to and co-operate with Government departments, public authorities, trade unions, employer organizations and other interested persons in relation to occupational safety and health;
  - (e) to formulate or recommend standards, specifications or other forms of guidance for the purpose of assisting employers, self employed persons and employees to maintain appropriate standards of occupational safety and health;
  - (f) to promote education and training in occupational safety and health as widely as possible;
  - (g) in co-operation with educational authorities or bodies to devise and approve courses in relation to occupational safety and health;
  - (h) having regard to the criteria laid down by the National Occupational Health and Safety Commission, to advise persons on training in occupational safety and health and to formulate and accredit training courses in occupational safety and health;
  - (i) to recommend to the Minister the establishment of public inquiries into any matter relating to occupational safety and health;
  - (j) to collect, publish and disseminate information on occupational safety and health;
  - (k) to formulate reporting procedures and monitoring arrangements for identification of workplace hazards, and incidents in which injury or death is likely to occur in an occupational situation; and
  - (l) to commission and sponsor research into occupational safety and health.
- (2) The Commission may issue for public review and comment any regulations, codes of practice or guidelines with respect to which it proposes under subsection (1)(b) to make any recommendations to the Minister.

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- (3) The Commission shall ensure, as far as is practicable, that any information it provides is in such language and form as are appropriate for the persons to whom the information is directed.
- (4) The Minister shall within 60 days after receiving from the Commission a recommendation under subsection (1) make reply in writing to the Commission in relation to that recommendation.  
*[Section 14 amended by No. 43 of 1987 s.11; No. 30 of 1995 s.47.]*

**15. Advisory Committees**

- (1) The Commission may at any time and when so requested by the Minister shall appoint advisory committees to assist it in the performance of its functions and duties.
- (2) Subject to this section, an advisory committee shall consist of such number of persons as are appointed by the Commission.
- (3) Subject to the direction of the Commission an advisory committee may determine its own procedures.
- (4) The members of advisory committees are entitled to be paid such remuneration and travelling and other allowances as may be determined by the Minister on the recommendation of the Public Service Commissioner <sup>2</sup>.
- (5) In appointing persons to be members of advisory committees under this section the Commission —
  - (a) shall, as far as is practicable, appoint persons who represent employers, employees and persons having knowledge of or experience in occupational safety and health; and
  - (b) shall have regard to the desirability of having a reasonable number of men and women, including persons of differing ethnic backgrounds and other groups with special needs.

*[Section 15 amended by No. 30 of 1995 s.47.]*

**16. Annual report**

- (1) The Commission shall on or before 31 October in each year prepare and submit to the Minister a report of its operations and the operation of this Act and any prescribed law during the year ending on the preceding 30 June.
- (2) The Minister shall cause a report submitted under this section to be laid before each House of Parliament within 12 sitting days of such House of its receipt by him.

**17. Staff to assist the Commission**

There shall be appointed under and subject to Part 3 of the *Public Sector Management Act 1994* such officers and employees as are necessary to assist the Commission in the performance of its functions and duties.

*[Section 17 amended by No. 32 of 1994 s.19; No. 30 of 1995 s.47.]*

**18. The Commissioner and the department**

- (1) The Commissioner is subject to the control and direction of the Minister, and is responsible to the Minister for the administration of this Act and any other law relating to occupational safety and health administered by the Minister.
- (2) There shall be appointed under and subject to Part 3 of the *Public Sector Management Act 1994* such officers as are necessary for the administration of this Act and any law relating to occupational safety and health administered by the Minister.
- (3) The offices of Commissioner and chief executive officer of the department may be held by the same person.
- (4) The Commissioner may, either generally or as provided by the instrument of delegation, by writing signed by him, delegate to any officer of the department any of his functions under this Act other than this power of delegation, and a function performed in

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accordance with a delegation under this subsection is deemed to be performed by the Commissioner.

*[Section 18 amended by No. 43 of 1987 s.12; No. 55 of 1987 s.5; No. 32 of 1994 s.19; No. 30 of 1995 s.47.]*



## **Part III — General provisions relating to occupational safety and health**

*[Heading inserted by No. 43 of 1987 s.13; amended by No. 30 of 1995 s.47.]*

### **19. Duties of employers**

- (1) An employer shall, so far as is practicable, provide and maintain a working environment in which his employees are not exposed to hazards and in particular, but without limiting the generality of the foregoing, an employer shall —
  - (a) provide and maintain workplaces, plant, and systems of work such that, so far as is practicable, his employees are not exposed to hazards;
  - (b) provide such information, instruction, and training to, and supervision of, his employees as is necessary to enable them to perform their work in such a manner that they are not exposed to hazards;
  - (c) consult and co-operate with safety and health representatives, if any, and other employees at his workplace, regarding occupational safety and health at the workplace;
  - (d) where it is not practicable to avoid the presence of hazards at the workplace, provide his employees with, or otherwise provide for his employees to have, such adequate personal protective clothing and equipment as is practicable to protect them against those hazards, without any cost to the employees; and
  - (e) make arrangements for ensuring, so far as is practicable, that —
    - (i) the use, cleaning, maintenance, transportation and disposal of plant; and

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- (ii) the use, handling, processing, storage, transportation and disposal of substances, at the workplace is carried out in a manner such that his employees are not exposed to hazards.
- (2) In determining the training required to be provided in accordance with subsection (1)(b) regard shall be had to the functions performed by employees and the capacities in which they are employed.
- (3) If, at a workplace, an employee incurs an injury, or is affected by a disease, that —
  - (a) results in the death of the employee; or
  - (b) is of a kind prescribed in the regulations for the purposes of this subsection,

the employer of that employee shall forthwith notify the Commissioner in the prescribed form giving such particulars as may be prescribed.

- (4) For the purposes of this section, where, in the course of a trade or business carried on by him, a person (in this section called **“the principal”**) engages another person (in this section called **“the contractor”**) to carry out work for the principal —
  - (a) the principal is deemed, in relation to matters over which he has control or, but for an agreement between him and the contractor to the contrary, would have had control, to be the employer of —
    - (i) the contractor; and
    - (ii) any person employed or engaged by the contractor to carry out or to assist in carrying out the work;
  - and
  - (b) the persons mentioned in paragraph (a)(i) and (ii) are deemed, in relation to those matters, to be employees of the principal.

- (5) Nothing in subsection (4) derogates from —
  - (a) the duties of the principal to the contractor; or
  - (b) the duties of the contractor to persons employed or engaged by him.
- (6) An employer who contravenes subsection (1) commits an offence and is liable to a fine of \$100 000.
- (7) An employer who contravenes subsection (1) and by that contravention causes the death of, or serious harm to, an employee commits an offence and is liable to a fine of \$200 000.
- (8) An employer who contravenes subsection (3) commits an offence and is liable to a fine of \$25 000.
- (9) An employer charged with an offence against subsection (7) may, instead of being convicted of that offence, be convicted of an offence against subsection (6).

*[Section 19 inserted by No. 43 of 1987 s.13; amended by No. 30 of 1995 ss.13 and 47.]*

**20. Duties of employees**

- (1) An employee shall take reasonable care —
  - (a) to ensure his own safety and health at work; and
  - (b) to avoid adversely affecting the safety or health of any other person through any act or omission at work.
- (2) Without limiting the generality of subsection (1), an employee contravenes that subsection if he —
  - (a) fails to comply, so far as he is reasonably able, with instructions given by his employer for his own safety or health or for the safety or health of other persons;
  - (b) fails to use such protective clothing and equipment as is provided, or provided for, by his employer as mentioned in section 19(1)(d) in a manner in which he has been properly instructed to use it;

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- (c) misuses or damages any equipment provided in the interests of safety or health; or
  - (d) fails to report forthwith to his employer —
    - (i) any situation at the workplace that he has reason to believe could constitute a hazard to any person and he cannot himself correct; or
    - (ii) any injury or harm to health of which he is aware that arises in the course of, or in connection with, his work.
- (3) An employee shall co-operate with his employer in the carrying out by his employer of the obligations imposed on him under this Act.
- (4) An employee who contravenes subsection (1) or (3) commits an offence and is liable to a fine of \$10 000.
- (5) An employee who contravenes subsection (1) or (3) and by that contravention causes the death of, or serious harm to, any person commits an offence and is liable to a fine of \$20 000.
- (6) An employee charged with an offence against subsection (5) may, instead of being convicted of that offence, be convicted of an offence against subsection (4).

*[Section 20 inserted by No. 43 of 1987 s.13; amended by No. 30 of 1995 ss.14 and 47.]*

**21. Duties of employers and self-employed persons**

- (1) An employer or a self-employed person shall —
  - (a) take reasonable care to ensure his own safety and health at work; and
  - (b) so far as is practicable, ensure that the safety or health of a person not being his employee is not adversely affected wholly or in part as a result of the work in which he or any of his employees is engaged.
- (2) A person who contravenes subsection (1) commits an offence and is liable to a fine of \$100 000.

- (3) A person who contravenes subsection (1) and by that contravention causes the death of, or serious harm to, any person commits an offence and is liable to a fine of \$200 000.
- (4) A person charged with an offence against subsection (3) may, instead of being convicted of that offence, be convicted of an offence against subsection (2).

*[Section 21 inserted by No. 43 of 1987 s.13; amended by No. 30 of 1995 ss.15 and 47.]*

**22. Duties of persons who have control of workplaces**

- (1) A person who has, to any extent, control of —
  - (a) a workplace where persons who are not employees of that person work or are likely to be in the course of their work; or
  - (b) the means of access to and egress from a workplace,shall take such measures as are practicable to ensure that the workplace, or the means of access to or egress from the workplace, as the case may be, are such that persons who are at the workplace or use the means of access to and egress from the workplace are not exposed to hazards.
- (2) Where a person has, by virtue of a contract or lease, an obligation of any extent in relation to the maintenance or repair of a workplace or the means of access to and egress from the workplace, the person shall be treated for the purposes of subsection (1) as being a person who has control of that workplace or that means of access or egress.
- (3) A reference in this section to a person having control of any workplace or means of access to or egress from a workplace is a reference to a person having control of that workplace or that means of access or egress in connection with the carrying on by that person of a trade, business or undertaking (whether for profit or not).
- (4) A person who contravenes subsection (1) commits an offence and is liable to a fine of \$100 000.

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- (5) A person who contravenes subsection (1) and by that contravention causes the death of, or serious harm to, any person commits an offence and is liable to a fine of \$200 000.
- (6) A person charged with an offence against subsection (5) may, instead of being convicted of that offence, be convicted of an offence against subsection (4).
- (7) This section does not apply to a person whose duties are set out in section 20.

*[Section 22 inserted by No. 30 of 1995 s.16.]*

**23. Duties of manufacturers, etc.**

- (1) A person who designs, manufactures, imports or supplies any plant for use at a workplace shall, so far as is practicable —
  - (a) ensure that the design and construction of the plant is such that persons who properly install, maintain or use the plant are not in doing so, exposed to hazards;
  - (b) test and examine, or arrange for the testing and examination of, the plant so as to ensure that its design and construction are as mentioned in paragraph (a); and
  - (c) ensure that adequate information in respect of —
    - (i) any dangers associated with the plant;
    - (ii) the specifications of the plant and the data obtained on the testing of the plant as mentioned in paragraph (b);
    - (iii) the conditions necessary to ensure that persons properly using the plant are not, in so doing, exposed to hazards; and
    - (iv) the proper maintenance of the plant,is provided when the plant is supplied and thereafter whenever requested.
- (2) A person who erects or installs any plant for use at a workplace shall, so far as is practicable, ensure that it is so erected or

installed that persons who properly use the plant are not subjected to any hazard that arises from, or is increased by, the way in which the plant is erected or installed.

- (3) A person who manufactures, imports or supplies any substance for use at a workplace shall, so far as is practicable, ensure that adequate toxicological data in respect of the substance and such other data as is relevant to the safe use, handling, processing, storage, transportation and disposal of the substance is provided —
- (a) when the substance is supplied; and
  - (b) thereafter whenever requested.
- (3a) A person who designs or constructs any building or structure, including a temporary structure, for use at a workplace shall, so far as is practicable ensure that the design and construction of the building or structure is such that —
- (a) persons who properly construct, maintain, repair or service the building or structure; and
  - (b) persons who properly use the building or structure,
- are not, in doing so, exposed to hazards.
- (4) A person who contravenes subsection (1), (2), (3) or (3a) commits an offence and is liable to a fine of \$100 000.
- (5) A person who contravenes subsection (1), (2), (3) or (3a) and by that contravention causes the death of, or serious harm to, any person commits an offence and is liable to a fine of \$200 000.
- (6) A person charged with an offence against subsection (5) may, instead of being convicted of that offence, be convicted of an offence against subsection (4).

*[Section 23 inserted by No. 43 of 1987 s.13; amended by No. 30 of 1995 s.17.]*

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**23A. Prohibited activities in prescribed areas**

- (1) A person shall not —
- (a) engage in any activity, other than a prescribed activity; or
  - (b) engage in a prescribed activity, other than in a prescribed manner,

at a workplace in an area of the State prescribed for the purposes of this section.

- (2) A person who contravenes subsection (1), commits an offence and is liable to a fine of \$100 000.
- (3) A person who contravenes subsection (1) and by that contravention causes the death of, or serious harm to, any person commits an offence and is liable to a fine of \$200 000.
- (4) A person charged with an offence against subsection (3) may, instead of being convicted of that offence, be convicted of an offence against subsection (2).

*[Section 23A inserted by No. 30 of 1995 s.18.]*

**23B. No double jeopardy**

A person is not liable to be punished twice under this Act in respect of any act or omission.

*[Section 23B inserted by No. 30 of 1995 s.18.]*

**24. Resolution of issues at the workplace**

- (1) Where an issue relating to occupational safety or health arises at a workplace the employer shall, in accordance with the relevant procedure, attempt to resolve the issue with —
- (a) the safety and health representative;
  - (b) the safety and health committee; or
  - (c) the employees,

whichever is specified in the relevant procedure.



- (2) For the purposes of subsection (1), **“the relevant procedure”** means the procedure agreed between the employer and the employees as applying in respect of the workplace concerned or, where no procedure is so agreed, the procedure prescribed for that purpose in the regulations.
- (3) Where attempts to resolve an issue as mentioned in subsection (1) do not succeed and there is both a safety and health representative and a safety and health committee in respect of the workplace concerned, the safety and health representative shall refer the issue to the safety and health committee for it to attempt to resolve the issue.
- (4) A person who contravenes subsection (1) or (3) commits an offence.

*[Section 24 inserted by No. 43 of 1987 s.13; amended by No. 30 of 1995 s.47.]*

**25. Inspector may be notified where issues unresolved**

- (1) Where attempts to resolve an issue as mentioned in section 24 are unsuccessful, and where there is a risk of imminent and serious injury to, or imminent and serious harm to the health of any person, the employer, a safety and health representative or, if there is no safety and health representative, an employee may notify an inspector thereof.
- (2) An inspector, upon being notified under subsection (1), shall attend forthwith at the workplace and either —
  - (a) take such action under this Act as he considers appropriate; or
  - (b) determine that in the circumstances no action is required to be taken under this Act.

*[Section 25 inserted by No. 43 of 1987 s.13; amended by No. 30 of 1995 s.19.]*

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**26. Refusal by employees to work in certain cases**

- (1) Nothing in section 25 prevents an employee from refusing to work where he has reasonable grounds to believe that to continue to work would expose him or any other person to a risk of imminent and serious injury or imminent and serious harm to his health.
- (1a) In determining whether an employee has reasonable grounds for the belief referred to in subsection (1) it is relevant to consider whether an inspector has attended the workplace upon being notified under section 25(1) of the risk and whether —
  - (a) the measures, if any, required by the inspector to be taken to remedy the matters giving rise to the risk have been taken;
  - (b) the requirements, if any, of the inspector to remedy the matters giving rise to the risk have ceased to have effect; or
  - (c) the inspector has determined that no action is required to be taken under this Act.
- (2) An employee who refuses to work as mentioned in subsection (1) shall forthwith notify his employer and, if there is a safety and health representative for the workplace concerned, such safety and health representative, and the matter shall be regarded as an issue to which section 24(1) applies.
- (2a) An employee who refuses to work as mentioned in subsection (1) shall not leave the workplace concerned until the employee has notified the employer under subsection (2) and that employer has authorized the employee to leave that workplace.
- (2b) Subsection (2a) does not apply if the employee has reasonable grounds to believe that to remain at the workplace concerned would expose the employee to a risk of imminent and serious injury or imminent and serious harm to his or her health.
- (3) An employee who contravenes subsection (2) or (2a) commits an offence.

*[Section 26 inserted by No. 43 of 1987 s.13; amended by No. 30 of 1995 ss.20 and 47.]*

**27. Assignment of other work**

An employee who refuses to work as mentioned in section 26(1) may be given reasonable alternative work to do until he resumes his usual work.

*[Section 27 inserted by No. 43 of 1987 s.13.]*

**28. Entitlements to continue**

(1) An employee who refuses to work as mentioned in section 26(1) is entitled to the same pay and other benefits, if any, to which he would be entitled if he had continued to do his usual work.

(1a) Subsection (1) does not apply if —

- (a) the employee leaves the workplace without the authorization of the employer as required under section 26(2a); or
- (b) the employee refuses to do reasonable alternative work that the employee is given under section 27.

(2) A dispute arising as to —

- (a) whether a person is entitled to any pay or benefit; or
- (b) the pay or benefit to which a person is entitled,

in accordance with subsection (1), may be referred by any party to the dispute to a safety and health magistrate for determination.

*[Section 28 inserted by No. 43 of 1987 s.13; amended by No. 30 of 1995 ss.21 and 47.]*

**28A. Offences — refusal to work**

(1) In this section “**disentitled employee**” means an employee who refuses to work for any period —

- (a) on the grounds that to do so would involve a risk of injury or harm to the health of any person; or

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- (b) on the grounds that another employee refuses to work because to do so would involve a risk of injury or harm to the health of any person,

but does not include a person who has refused to work as mentioned in section 26(1) and who is entitled to pay and other benefits under section 28(1).

- (2) An employee who accepts from his or her employer, in respect of any period during which that employee is a disentitled employee, any pay or other benefits to which the employee would have been entitled if he or she had continued to work commits an offence.
- (3) An employer who pays or provides to an employee, in respect of any period during which the employee is a disentitled employee, any pay or other benefits to which the employee would have been entitled if the employee had continued to work commits an offence.
- (4) In subsections (2) and (3) a reference to pay and other benefits does not include a reference to any payment or benefit prescribed for the purposes of this section.
- (5) This section has effect despite any provision of any other written law, including the *Industrial Relations Act 1979*, and any order, award or agreement made or registered under that Act.

*[Section 28A inserted by No. 30 of 1995 s.22.]*

## **Part IV — Safety and health representatives and committees**

*[Heading inserted by No. 43 of 1987 s.13; amended by No. 30 of 1995 s.47.]*

### **29. Notices requiring election of safety and health representatives**

An employee who works at a workplace may give notice to the employer requiring the election of a safety and health representative for the workplace.

*[Section 29 inserted by No. 43 of 1987 s.13; amended by No. 30 of 1995 s.47.]*

### **30. Consultation on matters relevant to elections**

- (1) An employer shall, within 21 days of being given notice under section 29 requiring the election of a safety and health representative, invite the employees who work at the workplace in respect of which the notice is given to appoint a delegate or delegates in accordance with subsection (3).
- (2) An employer may, at any time the employer requires the election of a safety and health representative for a workplace of the employer, invite the employees who work at the workplace to appoint a delegate or delegates in accordance with subsection (3).
- (3) The employees who work at a workplace may, upon being invited under this section to do so, appoint a delegate or delegates from amongst their number to represent them.
- (3a) An employer shall consult with the delegate or delegates, as the case requires, appointed under this section as to the matters which are required to be determined under this section.
- (4) The matters requiring to be determined under this section in relation to an election are —
  - (a) the number of safety and health representatives to be elected;

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- (aa) the matters or areas in respect of which each safety and health representative is to exercise functions in the workplace;
  - (b) whether any training is to be agreed as being adequate for the purposes of section 31(8)(b) and, if so, what that training is to be; and
  - (c) the person by whom and the manner in which the election is to be conducted.
- (5) Where they wish to do so, the parties consulting under subsection (3a) may request that an election to be held for the purpose of electing a safety and health representative be conducted by the Electoral Commissioner appointed under the *Electoral Act 1907*.
- (6) Any matter mentioned in subsection (4) that remains unresolved notwithstanding attempts to resolve it under subsection (3a) may be referred to the Commissioner who shall, if unable to resolve the matter to the satisfaction of each of the parties concerned, refer the matter to a safety and health magistrate for determination.
- (7) An employer who contravenes subsection (1) or (3a) commits an offence.

*[Section 30 inserted by No. 43 of 1987 s.13; amended by No. 30 of 1995 ss.23 and 47.]*

**31. Election of safety and health representatives**

- (1) In this section “**election**” means an election required for the purpose of electing a safety and health representative for the workplace concerned.
- [(2), (3), (4) and (5) repealed]*
- (6) Subject to this section, an election shall be conducted and safety and health representatives shall be elected in accordance with any determination under section 30.

- (7) Every employee who works at the workplace is entitled to vote at an election and the election shall be by secret ballot.
- (8) A person is not eligible to be elected as a safety and health representative for a workplace unless —
  - (a) he is an employee who works at the workplace; and
  - (b) he has —
    - (i) been continuously employed by the employer concerned during the preceding 2 years;
    - (ii) had a total of at least 2 years' experience in work of a similar nature to the work he does at the workplace;
    - (iii) had such training, if any, as is agreed under section 30 as being adequate for the purposes of this paragraph; or
    - (iv) been approved by the Commissioner for the purposes of this paragraph.
- (9) If only one eligible candidate is nominated for election to an office of safety and health representative —
  - (a) a ballot need not be held; and
  - (b) that candidate shall be deemed to have been duly elected.
- (10) The person conducting an election shall notify the employer concerned of the results of the election.
- (10a) A safety and health representative shall, within 14 days of being elected under this section, notify the Commissioner in the prescribed form of that election and give such further particulars as are prescribed in that form.
- (10b) A safety and health representative who contravenes subsection (10a) commits an offence.
- (11) Where a question relating to an election arises, the matter may be referred by any person interested in the question to the Commissioner who shall, if he is unable to resolve the matter to

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the satisfaction of the persons concerned, refer the matter to a safety and health magistrate for determination.

*[Section 31 inserted by No. 43 of 1987 s.13; amended by No. 30 of 1995 ss.24 and 47.]*

**32. Terms of office**

- (1) A person who is elected as a safety and health representative holds office, subject to this Act, for a term of 2 years.
- (2) A person ceases to hold office as a safety and health representative if —
  - (a) his term of office expires and he is not re-elected;
  - (b) he ceases to be an employee who works at the workplace for which he was elected;
  - (c) he resigns his office by notice given to his employer;
  - (d) he is disqualified under section 34.

*[Section 32 inserted by No. 43 of 1987 s.13; amended by No. 30 of 1995 s.47.]*

**33. Functions of safety and health representatives**

- (1) The functions of a safety and health representative are, in the interests of safety and health at the workplace for which he was elected —
  - (a) to inspect that workplace or any part of it —
    - (i) at such times as are agreed with the employer; or
    - (ii) where he has not inspected the workplace, or that part of it, in the preceding 30 days, at any time upon giving reasonable notice to the employer;
  - (b) immediately, in the event of an accident, a dangerous occurrence, or a risk of imminent and serious injury to, or imminent and serious harm to the health of, any person, to carry out any appropriate investigation in respect of the matter;



- (c) to keep himself informed as to the safety and health information provided by his employer in accordance with this Act and liaise as necessary with the department and other Government and private bodies;
  - (d) forthwith to report to the employer any hazard or potential hazard to which any person is, or might be, exposed at the workplace that comes to his notice;
  - (e) where there is a safety and health committee for the workplace, to refer to it any matters that he thinks should be considered by the committee;
  - (f) to consult and co-operate with his employer on all matters relating to the safety or health of persons in the workplace;
  - (g) liaise with the employees regarding matters concerning the safety or health of persons in the workplace.
- (2) A safety and health representative for a workplace has such powers as are necessary for the carrying out of the safety and health representative's functions under this Part and in particular, but without limiting the generality of this provision may, where requested to do so by an inspector, accompany an inspector while the inspector is carrying out, at the workplace, any of the inspector's functions under this Act.
- (3) A safety and health representative incurs no civil liability arising from his performance of, or his failure to perform, any function of a safety and health representative under this Act.

*[Section 33 inserted by No. 43 of 1987 s.13; amended by No. 30 of 1995 ss.25 and 47.]*

**34. Disqualification of safety and health representatives**

- (1) A party mentioned in subsection (2) may refer to a safety and health magistrate the question of whether a safety and health representative should be disqualified on the grounds that —
- (a) he has done anything under this Act with the intention only of causing harm to his employer or a commercial or business undertaking of his employer;

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- (b) he has used or disclosed any information acquired from his employer in his capacity as a safety and health representative for a purpose that is not connected with the performance of his functions under this Act with the intention of causing harm to his employer or a commercial or business undertaking of his employer; or
- (c) he has failed adequately to perform his functions under this Act,

or on any number of those grounds.

- (2) A reference under subsection (1) relating to the disqualification of a safety and health representative may be made by —
  - (a) his employer;
  - (b) any employee who works at the workplace concerned; or
  - (c) the Commissioner.
- (3) If, upon a reference under subsection (1), a safety and health magistrate is satisfied that grounds for the disqualification of the safety and health representative exist, the safety and health magistrate may disqualify him for a specified period, or permanently, from holding office as a safety and health representative.
- (4) In determining what disqualification, if any, should be imposed under subsection (3), a safety and health magistrate shall take into account —
  - (a) the harm, if any, caused to the employer or a commercial or business undertaking of the employer;
  - (b) the past record of the safety and health representative in performing his functions under this Act; and
  - (c) whether the safety and health representative acted contrary to the public interest,

and may take into account any other matters that the safety and health magistrate considers relevant.

*[Section 34 inserted by No. 43 of 1987 s.13; amended by No. 30 of 1995 ss.26 and 47.]*

**35. Certain duties of employers in relation to safety and health representatives**

- (1) Where there is any safety and health representative for a workplace the employer shall —
  - (a) subject to subsection (2), make available to each safety and health representative such information as the employer has, or could reasonably be expected to have, relating to —
    - (i) hazards to persons that arise or may arise at the workplace;
    - (ii) so far as it is relevant to the hazards mentioned in subparagraph (i), the plant and substances used at the workplace and the systems of work at the workplace; and
    - (iii) the safety and health of employees who work at the workplace;
  - (b) where an employee so requests, permit a safety and health representative to be present at any interview concerning occupational safety or health between the employer or his representative and the employee;
  - (c) consult with safety and health representatives on intended changes to the workplace or the plant or substances used at the workplace where those changes may reasonably be expected to affect the safety or health of employees at the workplace;
  - (d) permit a safety and health representative to take such time off work, with pay, for the purposes of performing his functions under this Act as is provided for by subsection (3);
  - (e) in accordance with the regulations, permit a safety and health representative to take such time off work, with pay, for the purposes of his attendance at courses of training accredited under section 14(1)(h) as is provided for by subsection (3);

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- (f) where any accident or dangerous occurrence takes place in a part of the workplace where employees who are represented by a safety and health representative work, ensure that the safety and health representative is notified thereof forthwith; and
  - (g) provide safety and health representatives with such facilities and assistance as are necessary or prescribed for the purposes of the performance by them of their functions under this Part.
- (2) An employer —
- (a) shall not make available to a safety and health representative any medical information concerning an employee unless —
    - (i) the employee has consented to him doing so; or
    - (ii) it is in a form that does not identify, nor permit the identification of, the employee;and
  - (b) is not required by subsection (1)(a) to make available information disclosing a trade secret.
- (3) The regulations may prescribe the time that a safety and health representative is to be permitted to take off work, with pay, for the purposes of —
- (a) performing his functions under this Act; and
  - (b) his attendance at courses of training accredited under section 14(1)(h),

but the time a safety and health representative is to be permitted to take off work, with pay, for those purposes may be varied, in a way not less favourable to the safety and health representative than that prescribed in the regulations, by agreement with the employer concerned or by a determination made by a safety and health magistrate upon a reference made to the safety and health magistrate under this subsection by the employer, the safety and health representative, or the Commissioner.

- (4) An employer who contravenes subsection (1) or (2) commits an offence.

*[Section 35 inserted by No. 43 of 1987 s.13; amended by No. 30 of 1995 ss.27 and 47.]*

**36. Requests for safety and health committees to be established**

- (1) An employee who works at a workplace may request the employer to establish a safety and health committee for the workplace under this Part.
- (2) Where an employer has been requested by an employee under subsection (1) to establish a safety and health committee, the employer shall, within 21 days of the request —
- (a) notify the employee and any safety and health representative for the workplace that he agrees to the request; or
  - (b) where he considers that the circumstances of his case are such that a safety and health committee should not be required to be established under this Act, refer to the Commissioner the question of whether such a committee should be established and notify the employee and any safety and health representative for the workplace that he has referred the matter to the Commissioner.
- (3) The Commissioner shall decide a question referred to him under subsection (2) and notify the employer and the employee concerned of his decision.

- (4) An employer who contravenes subsection (2) commits an offence.

*[Section 36 inserted by No. 43 of 1987 s.13; amended by No. 30 of 1995 ss.28 and 47.]*

**37. Establishment of safety and health committees**

- (1) An employer shall, in accordance with this Part and the regulations, establish a safety and health committee within 3 months of —
- (a) the coming into operation of a regulation requiring him to do so;

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- (b) service on him of a notice from the Commissioner requiring him to do so; or
  - (c) being requested under section 36(1) to do so,
- unless, in the case mentioned in paragraph (c), the Commissioner has decided that a safety and health committee should not be required to be established.
- (2) An employer who contravenes subsection (1) commits an offence.
  - (3) An employer may, of his own motion, establish a safety and health committee at any time in accordance with this Act.
  - (4) If the employer and the safety and health representatives of the workplaces concerned so determine, a safety and health committee constituted by —
    - (a) the person or persons nominated by that employer; and
    - (b) those safety and health representatives,may exercise its functions in relation to each of those workplaces.

*[Section 37 inserted by No. 43 of 1987 s.13; amended by No. 30 of 1995 ss.29 and 47.]*

**38. Composition of safety and health committees**

- (1) A safety and health committee for a workplace shall consist of —
  - (a) the safety and health representatives, if any;
  - (b) if there are no safety and health representatives, the person or persons elected by the employees for the purposes of this section; and
  - (c) the person or persons appointed by the employer for the purposes of this section.
- (2) Subject to subsections (4) and (5) —
  - (a) the number of persons to be elected by the employees for the purposes of this section shall be as is substantially agreed between the employer and employees concerned; and

- (b) the number of persons to be appointed by the employer for the purposes of this section shall be —
  - (i) as is agreed between the employer and the safety and health representative or, where there are 2 or more of them, the safety and health representatives, for the workplace; or
  - (ii) if there is no safety and health representative, as is substantially agreed between the employer and employees.
- (3) If there is —
  - (a) in the opinion of the Commissioner, failure to substantially agree the matter under subsection (2)(a), the number of persons to be elected by the employees for the purposes of this section shall be as decided by the Commissioner;
  - (b) failure to agree the matter under subsection (2)(b)(i), the number of persons to be appointed by the employer for the purposes of this section shall be as decided by the Commissioner; or
  - (c) in the opinion of the Commissioner, failure to substantially agree the matter under subsection (2)(b)(ii), the number of persons to be appointed by the employer for the purposes of this section shall be as decided by the Commissioner.
- (4) At least half of the members of a safety and health committee shall be safety and health representatives or, where there are no safety and health representatives, persons elected by the employees for the purposes of this section.
- (5) A person is not eligible for election or appointment as a member of a safety and health committee for a workplace unless he is the employer or an employee who works at the workplace, and the person or persons appointed by the employer shall be, or shall include, a person or persons having the authority of the

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employer to give effect to such matters as the committee might reasonably resolve in connection with the safety and health of persons at the workplace.

- (6) An employer may appoint himself or herself as a member of a safety and health committee.
- (7) An election for the purposes of this section shall be by secret ballot.

*[Section 38 inserted by No. 43 of 1987 s.13; amended by No. 30 of 1995 ss.30 and 47.]*

**39. Review of Commissioner's decision**

- (1) An employer, a safety and health representative, or an employee who works at a workplace may refer to a safety and health magistrate for review by that safety and health magistrate any decision of the Commissioner as to —
  - (a) whether or not it would be appropriate for a safety and health committee to be established; or
  - (b) the number of persons elected by the employees or appointed by the employer who are to be included in a safety and health committee.

- (2) A safety and health magistrate may confirm, vary or revoke a decision of the Commissioner referred under subsection (1).

*[Section 39 inserted by No. 43 of 1987 s.13; amended by No. 30 of 1995 ss.31 and 47.]*

**40. Functions of safety and health committees**

The functions of a safety and health committee are —

- (a) to facilitate consultation and co-operation between an employer and his employees in initiating, developing, and implementing measures designed to ensure the safety and health of employees at the workplace;
- (b) to keep itself informed as to standards relating to safety and health generally recommended or prevailing in



workplaces of a comparable nature and to review, and make recommendations to the employer on, rules and procedures at the workplace relating to the safety and health of the employees;

- (c) to recommend to the employer and employees the establishment, maintenance, and monitoring of programmes, measures and procedures at the workplace relating to the safety and health of the employees;
- (d) to keep in a readily accessible place and form such information as is provided under this Act by the employer regarding the hazards to persons that arise or may arise at the workplace;
- (e) to consider, and make such recommendations to the employer as the committee sees fit in respect of, any changes or intended changes to or at the workplace that may reasonably be expected to affect the safety or health of employees at the workplace;
- (f) to consider such matters as are referred to the committee by a safety and health representative; and
- (g) to perform such other functions as may be prescribed in the regulations or given to the committee, with its consent, by the employer.

*[Section 40 inserted by No. 43 of 1987 s.13; amended by No. 30 of 1995 s.47.]*

**41. Meetings**

- (1) Subject to subsection (2) and to the regulations a safety and health committee may determine its own procedures.
- (2) Each safety and health committee shall meet at intervals not exceeding 3 months.

*[Section 41 inserted by No. 43 of 1987 s.13; amended by No. 30 of 1995 s.47.]*

## **Part V — Inspectors**

*[Heading inserted by No. 43 of 1987 s.13.]*

### **42. Appointment**

- (1) The Commissioner shall appoint such officers of the department as he considers necessary to be inspectors for the purposes of this Act.
- (2) Every inspector appointed under subsection (1) shall be furnished with a certificate of his appointment, signed by either the Commissioner or an officer of the department authorized in that behalf by the Commissioner, and an inspector shall, if requested to do so, produce that certificate to any person in relation to whom he is about to exercise, or has exercised, any of his powers under this Act.
- (3) A certificate purporting to have been furnished under subsection (2) is, without proof of the signature of the person purporting to have signed it or of his authority to have signed it, evidence in any court of the appointment to which the certificate purports to relate.

*[Section 42 inserted by No. 43 of 1987 s.13.]*

### **43. Powers**

- (1) An inspector may, for the purposes of this Act —
  - (a) at all reasonable times of the day or night, enter, inspect and examine any workplace;
  - (b) enter any workplace at any other time that the performance of his functions under this Act requires such entry;
  - (c) when entering any workplace, take with him such equipment and materials as he considers appropriate;
  - (d) conduct such examination and inquiry as he considers necessary to ascertain whether there has been compliance with this Act;

- (e) examine any plant, substance or other thing whatsoever at the workplace;
  - (f) take and remove samples of any substance or thing, without paying for it;
  - (g) take possession of any plant or thing for further examination or testing or for use as evidence;
  - (h) take photographs and measurements, and make sketches and recordings;
  - (i) require the production of, examine, and take copies or extracts of, any document;
  - (j) require that the workplace, or any part of it, be left undisturbed for as long as is specified in the requirement;
  - (k) interview, either in private or otherwise, as he considers appropriate, any person whom he finds at a workplace or whom he has reasonable grounds to believe is, or was at any time during the preceding 2 years, an employee working at a workplace;
  - (l) require any person whom he interviews under paragraph (k) to answer any questions put to him and, if the inspector considers it appropriate, to verify any such answer by statutory declaration;
  - (m) require any person to state his name and address;
  - (n) require the employer or any person who works at a workplace to render such assistance to the inspector as the inspector considers necessary for the performance of his functions under this Act;
  - (o) exercise such other powers as may be conferred on him by the regulations or as may be necessary for the performance of his functions under this Act.
- (2) In exercising any of his powers under this Act an inspector may be accompanied by any other person whose assistance the inspector considers necessary, and that person may do such

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things as are necessary to assist the inspector in the performance of his functions, and any thing so done shall be deemed to have been done by the inspector.

- (3) In carrying out the functions of an inspector under this Act, an inspector shall act in such a manner as to avoid unduly or unreasonably interfering with any work or work process.

*[Section 43 inserted by No. 43 of 1987 s.13; amended by No. 30 of 1995 s.32.]*

**44. Interpreters**

Where an inspector considers it necessary for the effective performance of his functions under this Act he may be accompanied by an interpreter, and any inquiry or requirement made to any person by an interpreter on behalf of an inspector shall be deemed to have been made by the inspector and any answer given to the interpreter shall be deemed to have been given to the inspector.

*[Section 44 inserted by No. 43 of 1987 s.13.]*

**45. Notification by inspector**

- (1) Upon entering a workplace an inspector shall forthwith take all reasonable steps to notify the employer of his presence.
- (2) An employer, upon being notified of the presence of an inspector at the workplace, shall forthwith notify the safety and health representative thereof, or, if there are 2 or more safety and health representatives for the workplace, such of them as have functions in relation to the matter or area with which the inspector is concerned.
- (3) Upon completing an inspection of a workplace, an inspector shall notify the employer, and any safety and health representative or safety and health committee concerned, of any action he has taken and any further action he requires to be taken under this Act in relation to the workplace as a result of the inspection.

- (4) Where an inspector takes any photograph or makes any sketch or recording of, or in respect of, a workplace he shall forthwith notify the employer and any safety and health representative concerned of —
- (a) the fact that he has taken the photograph or made the sketch or recording, as the case may be; and
  - (b) the time and place at which the photograph, sketch or recording may be inspected.
- (5) An employer who contravenes subsection (2) commits an offence.
- [Section 45 inserted by No. 43 of 1987 s.13; amended by No. 30 of 1995 s.47.]*

#### **46. Samples**

- (1) Where an inspector takes a sample under this Act in relation to a workplace, if practicable he shall divide the sample into 3 parts and deliver one part to the employer, use one part for such analysis, if any, as he considers necessary, and retain one part for future comparison.
- (2) Subject to subsection (3), where an analysis is carried out of a sample taken under this Act in relation to a workplace, the inspector taking the sample shall forthwith notify the employer and any safety and health representative concerned of the results of the analysis.
- (3) Subsection (2) does not apply in respect of the results of the analysis of a personal biological sample provided by an employee unless —
- (a) the employee has authorized the inspector to notify the person concerned; or
  - (b) the results are in a form that could not reasonably be expected to lead to the identification of any person to whom they relate.

*[Section 46 inserted by No. 43 of 1987 s.13; amended by No. 30 of 1995 ss.33 and 47.]*

**47. Offences**

- (1) A person who —
- (a) impersonates an inspector or forges any document purporting to be a certificate of the appointment of any person as an inspector;
  - (b) obstructs or interferes with an inspector in the performance of his functions under this Act, or any interpreter or other person assisting an inspector in the performance of his functions under this Act;
  - (ba) uses any threat or any abusive or insulting language to an inspector lawfully acting in the performance of a function conferred on an inspector under this Act, or any interpreter or other person assisting an inspector in the performance of that function;
  - (c) contravenes any requirement of an inspector made under this Act;
  - (d) provides to an inspector an answer or information that is false or misleading in any material particular;
  - (e) directly or indirectly prevents another person from complying with a requirement under this Act,

commits an offence.

- (2) A person is not excused from complying with a requirement under this Act to answer a question or provide information on the ground that to do so might result in him incriminating himself or rendering himself liable to a penalty, but an answer given or information provided by a person when so required is not admissible in evidence against him in any civil or criminal proceedings other than proceedings for perjury or for an offence under this Act arising out of the false or misleading nature of the answer or information.

*[Section 47 inserted by No. 43 of 1987 s.13; amended by No. 30 of 1995 s.34.]*

## **Part VI — Improvement and prohibition notices**

*[Heading inserted by No. 43 of 1987 s.13.]*

### **48. Inspectors may issue improvement notices**

- (1) Where an inspector is of the opinion that any person —
- (a) is contravening any provision of this Act; or
  - (b) has contravened a provision of this Act in circumstances that make it likely that the contravention will continue or be repeated,

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

- (2) An improvement notice shall —
- (a) state that the inspector is of the opinion that the person —
    - (i) is contravening a provision of this Act; or
    - (ii) has contravened a provision of this Act in circumstances that make it likely that the contravention will continue or be repeated;
  - (b) state reasonable grounds for forming that opinion;
  - (c) specify the provision of this Act in respect of which that opinion is held;
  - (d) specify the time before which the person is required, to remedy the contravention or likely contravention or the matters or activities occasioning the contravention or likely contravention; and
  - (e) contain a brief summary of how the right to have the notice reviewed, given by sections 51 and 51A, may be exercised.

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- (3) A person, other than the employer, to whom an improvement notice is issued shall forthwith give the notice, or a copy of it, to the employer, and where —
- (a) under subsection (1), an improvement notice is issued to an employer; or
  - (b) under this subsection an improvement notice, or a copy thereof, is given to an employer,

the employer shall cause the notice, or a copy of it, to be displayed in a prominent place at or near any workplace affected by the notice.

- (3a) A person shall not remove an improvement notice displayed under subsection (3) before the requirements of that improvement notice have been satisfied.
- (3b) Subsection (3a) does not apply in respect of an improvement notice that is suspended under section 51 or 51A or that has ceased to have effect.
- (3c) If an improvement notice is issued to a self-employed person in respect of a contravention of section 21, that person shall comply with subsection (3) as if the person were an employer.
- (4) Subject to sections 51 and 51A, a person to whom an improvement notice is issued who does not comply with the improvement notice within the time specified therein commits an offence.
- (5) A person to whom an improvement notice is issued commits an offence if the Commissioner is not notified forthwith upon the requirements of the improvement notice being satisfied.
- (6) A person who contravenes subsection (3), (3a) or (3c) commits an offence.

*[Section 48 inserted by No. 43 of 1987 s.13; amended by No. 30 of 1995 s.35.]*



**49. Inspectors may issue prohibition notices**

- (1) Where an inspector is of the opinion that an activity is occurring or may occur at a workplace which activity involves or will involve a risk of imminent and serious injury to, or imminent and serious harm to the health of, any person, the inspector may issue to a person who is or will be carrying on the activity, or a person who has or may be reasonably presumed to have control over the activity, a prohibition notice prohibiting the carrying on of the activity until an inspector is satisfied that the matters which give or will give rise to the risk are remedied.
- (2) An inspector who issues a prohibition notice shall remain at the workplace until the employer has been advised of the notice and, where the notice is in respect of an activity that is occurring, the prohibited activity has ceased.
- (3) A prohibition notice shall —
  - (a) state that the inspector is of the opinion that in the workplace there is occurring or may occur an activity which involves or will involve a risk of imminent and serious injury to, or imminent and serious harm to the health of, a person;
  - (b) state reasonable grounds for forming that opinion;
  - (c) specify the activity which in the inspector's opinion involves or will involve the risk and the matters which give or will give rise to the risk;
  - (d) where in the inspector's opinion the activity involves a contravention or likely contravention of any provision of this Act, specify that provision and state the reasons for that opinion; and
  - (e) contain a brief summary of how the right to have the notice reviewed, given by sections 51 and 51A, may be exercised.

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- (4) A person, other than the employer, to whom a prohibition notice is issued shall forthwith give the notice, or a copy of it, to the employer, and where —
- (a) under subsection (1), a prohibition notice is issued to an employer; or
  - (b) under this subsection a prohibition notice, or a copy thereof, is given to an employer,

the employer shall cause the notice, or a copy of it, to be displayed in a prominent place at or near any workplace affected by the notice.

- (4a) A person shall not remove a prohibition notice displayed under subsection (4) before the requirements of that prohibition notice, taking into account any modifications made under section 51(5), have been satisfied or the prohibition notice has ceased to have effect.
- (4b) If a prohibition notice is issued to a self-employed person in respect of a contravention of section 21, that person shall comply with subsection (4) as if the person were an employer.
- (5) Subject to sections 51 and 51A, a person to whom a prohibition notice is issued who does not comply with the prohibition notice commits an offence.
- (6) A person who contravenes subsection (4), (4a) or (4b) commits an offence.

*[Section 49 inserted by No. 43 of 1987 s.13; amended by No. 30 of 1995 s.36.]*

**50. Notices may include directions**

- (1) An inspector may include in an improvement notice or a prohibition notice directions as to the measures to be taken to remedy any contravention, likely contravention, risk, matters or activities to which the notice relates.

- (2) Any direction under subsection (1) may —
  - (a) refer to any code of practice; and
  - (b) offer the person to whom it is issued a choice of ways in which to remedy the contravention, likely contravention, risk, matters or activities.

*[Section 50 inserted by No. 43 of 1987 s.13.]*

**51. Review of notices**

- (1) An improvement notice or prohibition notice may, in accordance with this section, be referred for review to the Commissioner by —
  - (a) the person to whom the notice is issued; or
  - (b) the employer (if any) of the person to whom the notice is issued.
- (2) A reference under subsection (1) may be made in the prescribed form —
  - (a) in the case of an improvement notice, within the time specified in the notice as the time before which the notice is required to be complied with;
  - (b) in the case of a prohibition notice, within 7 days of the issue of the notice or such further time as may be allowed by the Commissioner.

*[(3) and (4) repealed]*

- (5) On the reference under this section of an improvement notice or a prohibition notice for review, the Commissioner shall inquire into the circumstances relating to the notice and may —
  - (a) affirm the notice;
  - (b) affirm the notice with such modifications as seem appropriate; or
  - (c) cancel the notice,

and, subject to section 51A, the notice shall have effect or, as the case may be, cease to have effect, accordingly.

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- (6) The Commissioner shall give to the person who referred the matter for review, and to any other person who was entitled under subsection (1) to refer the notice for review, a notice in writing of the decision on the reference and of the reasons for that decision.
- (6a) In dealing with a reference for the review of a prohibition notice the Commissioner may refer to an expert chosen by the Commissioner such matters as appear appropriate and may accept the advice of that expert.
- (7) Pending the decision on a reference under this section for the review of a notice, the operation of the notice shall —
  - (a) in the case of an improvement notice, be suspended; and
  - (b) in the case of a prohibition notice, continue, subject to any decision to the contrary made by the Commissioner.

*[Section 51 inserted by No. 43 of 1987 s.13; amended by No. 30 of 1995 s.37.]*

**51A. Further review of notices**

- (1) A person to whom notice of a decision is issued under section 51(6) may, if not satisfied with the Commissioner's decision, refer the matter in accordance with subsection (2) to a safety and health magistrate for further review.
- (2) A reference under subsection (1) may be made in the prescribed form within 7 days of the issue of the notice under section 51(6).
- (3) A review of a decision made under section 51 shall be in the nature of a rehearing.
- (4) A safety and health magistrate shall act as quickly as is practicable in determining a matter referred under this section.
- (5) On a reference under subsection (1) the safety and health magistrate shall inquire into the circumstances relating to the notice and may —
  - (a) affirm the decision of the Commissioner;

- (b) affirm the decision of the Commissioner with such modifications as seem appropriate; or
- (c) revoke the decision of the Commissioner and make such other decision with respect to the notice as seems fit,

and the notice shall have effect or, as the case may be, cease to have effect accordingly.

- (6) In dealing with a reference under this section the safety and health magistrate may refer to an expert chosen by the safety and health magistrate such matters as appear appropriate and the report of any such expert may be accepted as evidence.
- (7) Pending the decision on a reference under this section, irrespective of the decision of the Commissioner under section 51, the operation of the notice in respect of which the reference is made shall —
  - (a) in the case of an improvement notice, be suspended; and
  - (b) in the case of a prohibition notice, continue, subject to any decision to the contrary made by the safety and health magistrate.

*[Section 51A inserted by No. 30 of 1995 s.38.]*

## **Part VIA — Safety and health magistrates**

*[Heading inserted by No. 30 of 1995 s.39.]*

### **51B. Safety and health magistrates**

Every magistrate holds office as a safety and health magistrate by virtue of this section and ceases to hold that office upon ceasing to hold office as a magistrate.

*[Section 51B inserted by No. 30 of 1995 s.39.]*

### **51C. Jurisdiction of safety and health magistrate**

- (1) A safety and health magistrate has jurisdiction to —
  - (a) hear and determine any matter referred to a safety and health magistrate under this Act; and
  - (b) hear and determine under the *Justices Act 1902* proceedings instituted under section 52.
- (2) A decision by a safety and health magistrate on a matter referred under this Act has effect according to its substance.
- (3) Except as otherwise prescribed by or under this Act —
  - (a) the powers of a safety and health magistrate; and
  - (b) the practice and procedure to be observed by a safety and health magistrate,when exercising jurisdiction under subsection (1)(a) are those provided for by the *Local Courts Act 1904* and when exercising that jurisdiction a safety and health magistrate is taken to be a court under that Act.
- (4) If, in relation to a matter referred to a safety and health magistrate under this Act, no provision of the *Local Courts Act 1904* or this Act is applicable the matter shall be dealt with in such manner as the safety and health magistrate may direct.
- (5) When exercising jurisdiction under subsection (1)(b) a safety and health magistrate constitutes a court of summary jurisdiction.

*[Section 51C inserted by No. 30 of 1995 s.39.]*

**51D. Representation**

In the hearing and determination of a matter under section 51C(1)(a) before a safety and health magistrate a party may appear personally or be represented by any agent, including a legal practitioner.

*[Section 51D inserted by No. 30 of 1995 s.39.]*

**51E. Administrative arrangements**

The Chief Stipendiary Magistrate shall make such administrative arrangements as are necessary to enable a safety and health magistrate to carry out functions under this Act.

*[Section 51E inserted by No. 30 of 1995 s.39.]*

## **Part VII — Legal proceedings**

*[Heading inserted by No. 43 of 1987 s.13.]*

### **52. Prosecutions**

- (1) Proceedings for an offence against this Act may be instituted by any person authorized in that behalf by the Commissioner.
- (2) Proceedings for an offence against this Act shall be heard and determined by a safety and health magistrate.
- (3) Proceedings for an offence against this Act may be commenced at any time within 3 years after the offence was committed.

*[Section 52 inserted by No. 43 of 1987 s.13; amended by No. 30 of 1995 s.40; No. 63 of 1998 s.5(1).]*

### **53. Evidentiary provisions**

In proceedings for an offence against this Act an averment in the complaint that at a particular time —

- (a) a particular place was a workplace;
- (b) a particular person was an employer of persons at a particular workplace;
- (c) a particular person had —
  - (i) control of a particular workplace; or
  - (ii) control of the means of access to or egress from a particular workplace;
- (d) a notice required under this Act to be given had not been given;
- (e) a prescribed fee had not been paid;
- (f) a particular person was an inspector,

is, in the absence of evidence to the contrary, taken to be proved.

*[Section 53 inserted by No. 43 of 1987 s.13; amended by No. 30 of 1995 s.41; No. 10 of 1998 s.56.]*



**54. General penalty**

A person who commits an offence against this Act is liable, if a penalty is not expressly provided for that offence —

- (a) where the offence is committed by a person as an employee, to a fine of \$5 000; and
- (b) in any other case, to a fine of \$25 000.

*[Section 54 inserted by No. 30 of 1995 s.42.]*

**54AA. Penalties for bodies corporate**

Despite section 40(5) of the *Sentencing Act 1995*, the penalty for a body corporate convicted of an offence under this Act is the penalty provided by this Act.

*[Section 54AA inserted by No. 78 of 1995 s.76.]*

**54A. Continuing offences**

- (1) Where an offence is committed by a person by reason of the contravention of a provision of this Act under which the person is required or directed to do any act or thing, or to refrain from doing any act or thing, that offence is taken to continue so long as the act or thing so required or directed remains undone, or continues to be done, as the case may be.
- (2) Where an offence is taken to continue, the person who committed the offence, whether by act or omission, commits an additional offence on each day during which the offence is taken to continue after notice of the offence has been given by or on behalf of an inspector to the offender, and is liable to a fine not exceeding \$200 where the offence is committed by a person as an employee and \$1 000 in any other case for every day on which the offence is so continued.

*[Section 54A inserted by No. 30 of 1995 s.42.]*

**54B. Appeals**

- (1) Part VIII of the *Justices Act 1902* applies to an appeal from a decision of a safety and health magistrate under section 52.

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- (2) A party to proceedings before a safety and health magistrate, other than proceedings referred to in section 52, may, by leave of the Supreme Court, appeal to the Supreme Court on a question of law against a determination or decision of the safety and health magistrate.
- (3) An appeal or an application for leave to appeal to the Supreme Court under subsection (2) shall be brought in the manner and in the time prescribed by rules made by the Supreme Court and shall be heard and determined by a single judge of the Supreme Court.
- (4) Without limiting the rules of the Supreme Court, where an appeal under subsection (2) has commenced, the court —
  - (a) may suspend the operation or effect of the determination or decision appealed against until the appeal is determined or is withdrawn; and
  - (b) may revoke any such suspension.

*[Section 54B inserted by No. 30 of 1995 s.42.]*

**55. Offences by bodies corporate**

- (1) Where a body corporate is guilty of an offence under this Act and it is proved that the offence occurred with the consent or connivance of, or was attributable to any neglect on the part of, any director, manager, secretary or other officer of the body, or any person who was purporting to act in any such capacity he, as well as the body corporate, is guilty of that offence.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

*[Section 55 inserted by No. 43 of 1987 s.13.]*

## Part VIII — Miscellaneous

*[Heading inserted by No. 43 of 1987 s.13.]*

### 56. Discrimination

- (1) An employer or prospective employer who in any way treats an employee or prospective employee less favourably than he otherwise would for the dominant or substantial reason that the employee or prospective employee —
- (a) is or has been a safety and health representative or a member of a safety and health committee;
  - (b) performs or has performed any function as a safety and health representative or a member of a safety and health committee;
  - (c) gives or has given assistance or information to an inspector, safety and health representative or any member of a safety and health committee; or
  - (d) makes or has made a complaint in relation to safety or health to a person who is or was his employer or fellow employee or an inspector, a safety and health representative or a member of a safety and health committee,

commits an offence.

- (2) A trade union that in any way treats a person less favourably than it otherwise would for the dominant or substantial reason of the manner in which he performs or has performed any function as a safety and health representative or a member of a safety and health committee commits an offence.

*[Section 56 inserted by No. 43 of 1987 s.13; amended by No. 30 of 1995 ss.43 and 47.]*

### 57. Codes of practice

- (1) For the purpose of providing practical guidance to employers, self-employed persons, employees, and other persons on whom

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a duty is imposed under Part III of this Act, the Minister may, upon the recommendation of the Commission, approve any code of practice.

- (2) A code of practice may consist of any code, standard, rule, specification or provision relating to occupational safety or health that is prepared by the Commission or any other body and may incorporate by reference any other such document either as it is in force at the time the code of practice is approved or as it may from time to time thereafter be amended.
- (3) The Minister may, upon the recommendation of the Commission, approve any revision of the whole or any part of a code of practice or revoke the approval of a code of practice.
- (4) The Minister shall cause to be published in the *Government Gazette* notice of every approval or revocation under this section and the approval or revocation comes into force on the day of such publication.
- (5) The Minister shall cause a copy of every code of practice, and any document incorporated in it by reference, and any revision or revocation of a code of practice to be laid before each House of Parliament within 14 sitting days of such House.
- (6) The Minister shall cause a copy of every code of practice, including any revision thereof and any document incorporated in it by reference, to be made available, without charge, for public inspection.
- (7) A person is not liable to any civil or criminal proceedings by reason only that he has not complied with a provision of a code of practice.
- (8) Where it is alleged in a proceeding under this Act that a person has contravened a provision of this Act or the regulations in relation to which a code of practice was in effect at the time of the alleged contravention —
  - (a) the code of practice is admissible in evidence in that proceeding; and

- (b) demonstration that the person complied with the provision of the Act or regulations whether or not by observing that provision of the code of practice is a satisfactory defence.

*[Section 57 inserted by No. 43 of 1987 s.13; amended by No. 30 of 1995 ss.44 and 47.]*

**58. Governor may transfer administration of certain laws to Minister**

- (1) For the purposes of facilitating the co-ordination of the administration of laws relating to occupational safety and health, where the Governor is of the opinion that —
  - (a) any law or a provision of a law relates to occupational safety and health and that law or that provision is administered by a Minister other than the Minister charged with the administration of this Act the Governor may by order transfer the administration of that law or that provision to the Minister;
  - (b) any law or provision of a law not relating to occupational safety and health that is administered by the Minister refers to an officer of the department the Governor may order that the reference shall be read and construed as a reference to an officer specified in the order,

and any such order shall have effect accordingly.

- (2) An order made under subsection (1) may be amended or revoked by the Governor.
- (3) An order made under subsection (1) or subsection (2) shall be published in the *Government Gazette* and shall be laid before each House of Parliament within 14 sitting days of such House.
- (4) An order under this section may provide for the transfer of any function imposed by the transferred law from the officer or authorized person specified in that law to an officer of the

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department who has the relevant qualifications and whose office or designation is specified in the order and any duty or power conferred by or under the transferred law may be carried out or exercised by the officer so specified and any direction or order given by the officer so specified under or for the purposes of the transferred law shall have effect accordingly.

- (5) A transferred law is deemed to be a prescribed law for the purposes of section 14(1)(b)(ii).

*[Section 58: Section 19 renumbered as section 58 by No. 43 of 1987 s.14; amended by No. 30 of 1995 s.47.]*

**59. Liability of members**

A person who is or has been Commissioner or member or acting member of the Commission or an inspector is not personally liable for anything done or omitted in good faith in, or in connection with, the exercise or purported exercise of any power conferred, or the carrying out of any duty or function imposed on the Commissioner, the Commission or an inspector, as the case requires, under this Act.

*[Section 59: Section 20 renumbered as section 59 and amended by No. 43 of 1987 s.15.]*

**60. Regulations**

- (1) The Governor may make regulations prescribing all matters that are necessary or convenient to be prescribed for giving effect to the purposes of this Act.
- (2) Without affecting the generality of subsection (1), the Governor may make regulations —
- (a) requiring a reference in a transferred law to be read and construed in the manner specified in the regulations;
  - (b) containing such provisions as in the opinion of the Governor are necessary or convenient for the purpose of dealing with matters that are incidental to or

consequential on the making of an order under section 58 and of a regulation made pursuant to paragraph (a), including provisions of a savings or transitional nature.

- (3) A provision of a regulation made under subsection (2) may take effect on and from a day that is earlier than the day on which the regulation is published in the *Government Gazette*.
- (4) To the extent to which a provision of a regulation made under this section takes effect on and from a day that is earlier than the day on which it is published in the *Government Gazette*, the provision does not operate —
  - (a) to affect, in a manner prejudicial to any person (other than the State or a public authority), the rights of that person existing before that day of publication; or
  - (b) to impose a liability on any person (other than the State or a public authority) in respect of anything done or omitted to be done before that day of publication.
- (5) Without affecting the generality of subsection (1) regulations may be made with respect to any of the matters specified in the Schedule.
- (6) Regulations made under this Act may provide that contravention of a regulation constitutes an offence and provide for penalties not exceeding —
  - (a) \$5 000 where the offence is committed by a person as an employee; and
  - (b) \$25 000 in any other case,and if the offence is a continuing one a further penalty not exceeding —
  - (c) \$200 where the offence is committed by a person as an employee; and

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(d) \$1 000 in any other case,

for each day or part of a day during which the offence continues after notice of the offence has been given by or on behalf of an inspector to the offender.

*[Section 60: Section 21 renumbered as section 60 and amended by No. 43 of 1987 s.16; No. 30 of 1995 s.45.]*

**61. Review of Act**

(1) The Minister shall carry out a review of the operations of this Act on every fifth anniversary of the commencement of this Act and in the course of such review the Minister shall consider and have regard to —

- (a) the attainment of the objects of this Act;
- (b) the administration of the Acts and laws relating to occupational safety and health administered by the Minister;
- (c) the effectiveness of the operations of the Commission, any advisory committees and the department;
- (d) the need for the continuation of the Commission and any committees established under this Act;
- (e) such other matters as appear to him to be relevant.

(2) The Minister shall prepare a report based on his review of this Act and shall, as soon as is practicable after its preparation, cause the report to be laid before each House of Parliament.

*[Section 61: Section 22 renumbered as section 61 by No. 43 of 1987 s.17; amended by No. 30 of 1995 s.47.]*



## **Schedule**

### **Subject matter for regulations**

1. Safety and health standards or procedures to be complied with —
  - (a) at any workplace;
  - (b) in the performance of any work;
  - (c) in the use, cleaning, maintenance, disposal or transportation of any plant;
  - (d) in the use, handling, treatment, removal, processing, storing, transport or disposal of any substance;
  - (e) in the design, manufacture, importing or supplying of any plant;
  - (f) in the design, manufacture, importing or supplying of any substance; or
  - (g) in the design or construction of any building or structure, including a temporary structure.
2. The safeguarding, siting, installing, testing, altering, repairing, maintaining or dismantling of any plant.
3. The testing, analysis, labelling or marking of any plant or substance.
4. The registration or licensing of —
  - (a) any work, plant, process, substance or workplace;
  - (b) any person carrying out any kind of work,by the Commissioner or any other prescribed person or authority.
5. 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.
6. The prohibition of the carrying on of prescribed activities at workplaces or the performance of prescribed work except by or under

**Schedule**

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- the supervision of persons with prescribed qualifications, training or experience.
- 6A. The prohibition of the use, handling, treatment, storage, transportation or disposal of any prescribed substance at a workplace.
7. The taking of any measures or precautions to avoid any accident or dangerous occurrence at any workplace.
8. The taking of any action in the event of any accident, injury, disease or dangerous occurrence.
9. The monitoring by an employer of —
- (a) the health of his employees subject to their consent; and
  - (b) working conditions at each workplace at which an employee of his carries out work.
10. The supply, use and maintenance of clothing and equipment for occupational safety or health purposes and the approval of such clothing and equipment for particular purposes.
11. Fire-safety rules and procedures and the provision and maintenance of fire protection equipment.
12. The appointment of persons who are to be responsible for the supervision of occupational safety and health in prescribed circumstances or industries.
13. The form and use of scaffolding, form work, false work and related equipment.
14. The carriage and handling of cash.
15. The provision of first aid facilities at workplaces and the standards for such facilities.
16. The provision by an employer of suitably qualified persons who are available to advise the employer on matters concerning the safety and health of his employees.
17. The medical examination of employees subject to their consent.

18. The provision by employers or occupiers of prescribed facilities for the safety and health of persons at the workplace.
19. The employment of young persons.
20. The safety of persons in isolated or remote areas.
21. Standards for the manual handling of loads by employees.
22. The safety of persons in the vicinity of any workplace.
23. The giving of notices, in specified circumstances, to the Minister, an inspector or other prescribed person or authority.
24. The keeping and provision of records and returns 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).
- 24A. The reporting of injuries incurred at workplaces, or diseases affecting employees at workplaces, other than injuries and diseases prescribed for the purposes of section 19(3).
25. The provision by an employer to his employees, in such languages as may be appropriate, of information relating to safety and health in connection with the work carried out by the employee.
26. Procedures that are to be carried out on inspections under this Act.
- 26A. The conduct of elections under this Act by secret ballot.
- 26B. The powers of safety and health magistrates.
- 26C. The remuneration of agents for services performed in connection with appearances under section 51D.
27. Fees (including differential and periodic fees) for the purpose of this Act.
28. Forms to be used for the purposes of this Act.
29. The recovery of fees under this Act.

**Schedule**

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30. Standards in relation to the use of any physical, biological, chemical or psychological hazard (including standards concerning exposure to any of those hazards).
31. The approval of laboratories for the analysis of samples taken under this Act and the conduct of tests for the purposes of this Act.

*[Schedule inserted by No. 43 of 1987 s.18; amended by No. 30 of 1995 ss.46 and 47.]*



**Notes**

<sup>1</sup> This reprint is a compilation as at 22 March 1999 of the *Occupational Safety and Health Act 1984* and includes the amendments effected by the other Acts referred to in the following Table.

**Table of Acts**

| Short Title   | Number and Assent Year       | Commencement  | Miscellaneous  |
|---|------------------------------|---|--|
| <i>Occupational Health, Safety and Welfare Act 1984</i>                   | 101 of 1984 19 December 1984 | 4 April 1985 (see section 2 and <i>Gazette</i> 4 April 1985 p.1241)           | Short title subsequently amended. (See note under section 1) |
| <i>Occupational Health, Safety and Welfare Amendment Act 1987</i>         | 43 of 1987 6 July 1987       | 16 September 1988 (see section 2 and <i>Gazette</i> 16 September 1988 p.3757) |  |
| <i>Occupational Health, Safety and Welfare Amendment Act (No. 2) 1987</i> | 55 of 1987 3 November 1987   | 3 November 1987 (see section 2)   |  |
| <i>Occupational Health, Safety and Welfare Amendment Act 1990</i>         | 84 of 1990 17 December 1990  | 14 January 1991   |  |
| <i>Acts Amendment (Public Sector Management) Act 1994, section 19</i>     | 32 of 1994 29 June 1994      | 1 October 1994 (see section 2 and <i>Gazette</i> 30 September 1994 p.4948)    |  |

## Occupational Safety and Health Act 1984

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| Short Title   | Number and Year | Assent            | Commencement  | Miscellaneous   |
|---|-----------------|-------------------|---|---|
| <i>Mines Safety and Inspection Act 1994</i> , section 109                             | 62 of 1994      | 7 November 1994   | 9 December 1995<br>(see section 2 and <i>Gazette</i><br>8 December 1995 p.5935)       |   |
| <i>Occupational Safety and Health Legislation Amendment Act 1995</i> , Part 2         | 30 of 1995      | 11 September 1995 | 1 October 1995<br>(see section 2 and <i>Gazette</i><br>15 September 1995 p.4301)      | Section 49:<br>transitional <sup>3</sup> ;<br>section 50:<br>savings <sup>4</sup>     |
| <i>Industrial Relations Legislation Amendment and Repeal Act 1995</i> , section 67(5) | 79 of 1995      | 16 January 1996   | 16 January 1996<br>(see section 3(1))   |   |
| <i>Sentencing (Consequential Provisions) Act 1995</i> , Part 55                       | 78 of 1995      | 16 January 1996   | 4 November 1996<br>(see section 2<br>and <i>Gazette</i><br>25 October 1996<br>p.5632) |   |
| <i>Statutes (Repeals and Minor Amendments) Act (No. 2) 1998</i> , section 56          | 10 of 1998      | 30 April 1998     | 30 April 1998<br>(see section 2(1))   |   |
| <i>Occupational Safety and Health (Validation) Act 1998</i>                           | 63 of 1998      | 12 January 1999   | 12 January 1999<br>(see section 2)  | Section 4:<br>validation <sup>5</sup> ;<br>section 5(2):<br>transitional <sup>6</sup> |

<sup>2</sup> Now to be read as a reference to the Minister for Public Sector Management. See section 112(2) of the *Public Sector Management Act 1984*.

<sup>3</sup> Section 49 of the *Occupational Safety and Health Legislation Amendment Act 1995* (Act No. 30 of 1995) reads as follows —

“

**49. Transitional: Matters referred to Industrial Relations Commission; prosecutions**

- (1) Any matter referred to the Industrial Relations Commission under the principal Act and not finally determined before the commencement of this section may be dealt with after that commencement as if the principal Act had not been amended by this Act.
- (2) An appeal in respect of the decision of the Industrial Relations Commission made before the commencement of this section may be —
  - (a) determined;
  - (b) heard and determined; or
  - (c) instituted, heard and determined,

as the case requires, under the *Industrial Relations Act 1979* as if the principal Act had not been amended by this Act.

- (3) Proceedings instituted under section 52 of the principal Act and not finally determined before the commencement of this section may be dealt with after that commencement as if that section had not been amended by this Act.

”

<sup>4</sup> Section 50 of the *Occupational Safety and Health Legislation Amendment Act 1995* (Act No. 30 of 1995) reads as follows —

“

**50. Change of title and constitution**

- (1) The amendments effected by this Act to change the titles of the Commissioner and health and safety representatives elected under the principal Act do not affect the continuity or tenure of those offices and the amendments effected by this Act to change the title of the Commission and health and safety committees established under the principal Act do not affect the continuity of those bodies.

- (2) Notwithstanding the amendments effected by section 8, persons who were appointed members of the Commission immediately before the commencement of that section continue to be members of the Commission on the same terms and conditions as those on which they were appointed..

”

<sup>5</sup> Section 4 of the *Occupational Safety and Health (Validation) Act 1998* (Act No. 63 of 1998) reads as follows —

“

**4. Validation**

- (1) In this section —

“**Commissioner**” means —

- (a) the Commissioner for Occupational Health, Safety and Welfare within the meaning of the *Occupational Health, Safety and Welfare Act 1984* as in force before 1 October 1995; or
- (b) the WorkSafe Western Australia Commissioner within the meaning of the *Occupational Safety and Health Act 1984* as in force on and from 1 October 1995.

- (2) No act, matter or thing done before 8 October 1996 —

- (a) by or in respect of William Neil Bartholomaeus; or
- (b) under the direction, authority or control or purported direction, authority or control of, or pursuant to a delegation or purported delegation made by, William Neil Bartholomaeus,

in his capacity or purported capacity as Commissioner is, or ever has been, invalid by reason that there was a defect in his appointment as Commissioner, or that he had not been appointed at all.

- (3) Each act, matter or thing referred to in subsection (2) is, and always has been, as valid, and effective and authorized by the principal Act as it would have been if William Neil Bartholomaeus had been duly appointed as Commissioner at the time the act,



matter or thing was done, the direction, authority or control exercised or the delegation made.

”

<sup>6</sup> Section 5(2) of the *Occupational Safety and Health (Validation) Act 1998* (Act No. 63 of 1998) reads as follows —

“

- (2) Section 52(3) of the *Occupational Safety and Health Act 1984*, as inserted by subsection (1), applies in respect of an offence committed against that Act before the commencement of subsection (1) despite the fact that the time for commencing proceedings for that offence expired before the commencement of subsection (1).

”

**Defined Terms**

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**Defined Terms**

*[This is a list of terms defined and the provisions where they are defined.  
It is not part of the Act.]*

| <b>Defined Term</b>                   | <b>Provision(s)</b> |
|---------------------------------------|---------------------|
| appointed member.....                 | 3(1)                |
| apprentice.....                       | 3(1)                |
| chairperson.....                      | 3(1)                |
| code of practice.....                 | 3(1)                |
| Commission.....                       | 3(1)                |
| Commissioner.....                     | 3(1)                |
| department.....                       | 3(1)                |
| disentitled employee.....             | 28A(1)              |
| election.....                         | 31(1)               |
| employee.....                         | 3(1)                |
| employer.....                         | 3(1)                |
| hazard.....                           | 3(1)                |
| improvement notice.....               | 3(1)                |
| industrial trainee.....               | 3(1)                |
| inspector.....                        | 3(1)                |
| plant.....                            | 3(1)                |
| practicable.....                      | 3(1)                |
| prescribed law.....                   | 3(1)                |
| prohibition notice.....               | 3(1)                |
| risk.....                             | 3(1)                |
| safety and health committee.....      | 3(1)                |
| safety and health magistrate.....     | 3(1)                |
| safety and health representative..... | 3(1)                |
| self-employed person.....             | 3(1)                |
| supply.....                           | 3(1)                |
| the contractor.....                   | 19(4)               |
| the principal.....                    | 19(4)               |
| the relevant procedure.....           | 24(2)               |
| trade union.....                      | 3(1)                |
| transferred law.....                  | 3(1)                |
| workplace.....                        | 3(1)                |