

OCCUPATIONAL HEALTH, SAFETY AND WELFARE AMENDMENT ACT 1987

(No. 43 of 1987)

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WESTERN AUSTRALIA

OCCUPATIONAL HEALTH, SAFETY AND WELFARE AMENDMENT ACT

No. 43 of 1987

AN ACT to amend the *Occupational Health, Safety and Welfare Act 1984*, to consequentially amend the *Parliamentary Commissioner Act 1971* and for connected purposes.

[Assented to 6 July 1987]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title

1. This Act may be cited as the *Occupational Health, Safety and Welfare Amendment Act 1987*.

Commencement

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

Principal Act

3. In this Act the *Occupational Health, Safety and Welfare Act 1984** is referred to as the principal Act.

[*Act No. 101 of 1984.]

Heading inserted

4. Before section 1 of the principal Act the following heading is inserted—

“ PART I—PRELIMINARY ”.

Section 3 amended

5. Section 3 of the principal Act is amended—

- (a) by inserting after the section designation “3.” the subsection designation “(1)”;
- (b) in the definition of “Commissioner”, by deleting “and Safety” and substituting the following—

“ , Safety and Welfare ”;
- (c) in the definition of “transferred law”, by deleting “section 19” and substituting the following—

“ this Act ”;
- (d) by inserting, in their appropriate alphabetical positions, the following definitions—
 - “ “code of practice” means a code of practice approved by the Minister under Part VIII; ”;
 - “ “employee” means a person by whom work is done under a contract of employment or apprenticeship; ”;

- “ “employer” means a person by whom an employee is employed under a contract of employment or apprenticeship; ”;
- “ “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; ”;
- “ “health and safety committee” means a health and safety committee established under Part IV; ”;
- “ “health and safety representative” means a health and safety representative elected under Part IV; ”;
- “ “improvement notice” means an improvement notice issued under Part VI; ”;
- “ “Industrial Relations Commission” means The Western Australian Industrial Relations Commission constituted under the *Industrial Relations Act 1979*; ”;
- “ “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
 - (c) the availability, suitability, and cost of the means referred to in paragraph (b) (iii); ”;

- “ “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; ”;
- “ “self-employed person” means a person who works for gain or reward otherwise than under a contract of employment or apprenticeship, 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 under the *Trade Unions Act 1902*; or
 - (b) an organization registered under the *Conciliation and Arbitration Act 1904* of the Parliament of the Commonwealth and having employees as its members, or a branch of any such organization; ”;
- “ “welfare” means welfare which is directly related to the employee’s health and safety in the workplace; ”;
- “ “workplace” means a place, whether or not in an aircraft, ship, vehicle, building, or other structure, where employees work or are likely to be in the course of their work. ”;

and

- (e) by inserting the following subsection—

- “ (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. ”.

Section 3A inserted

6. After section 3 of the principal Act the following section is inserted—

Jurisdiction of Industrial
Relations Commission

“ 3A. (1) Where under this Act a matter is capable of being referred to the Industrial Relations Commission the matter may be heard and determined as if it were a matter in which jurisdiction were conferred on the Industrial Relations Commission by the *Industrial Relations Act 1979* and that Act shall, so far as it is capable of applying, extend to the exercise of its jurisdiction in such matters accordingly.

(2) For the purposes of the application of the *Industrial Relations Act 1979* in relation to a matter mentioned in subsection (1)—

- (a) a trade union shall be taken to be an organization within the meaning of that Act;
- (b) the parties to proceedings in the matter shall be as determined by the Industrial Relations Commission.

(3) The decision by the Industrial Relations Commission of a matter referred under this Act shall have effect according to its tenor. ”.

Section 4 substituted

7. Section 4 of the principal Act is repealed and the following section is substituted—

Application of this Act

“ 4. (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 Regulation Act 1946*, the *Coal Mines Regulation Act 1946*, the *Petroleum Act 1967*, the *Petroleum (Submerged Lands) Act 1982* or the *Petroleum Pipelines Act 1969*, applies.

(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 5 amended

8. Section 5 of the principal Act is amended—

(a) in paragraph (b), by deleting “risks to health or safety” and substituting the following—

“ hazards ”; and

(b) in paragraph (d), by deleting “risks to the health, safety and welfare of persons” and substituting the following—

“ the hazards to which persons are exposed ”.

Heading inserted

9. Before section 6 of the principal Act the following heading is inserted—

“ PART II—OCCUPATIONAL HEALTH, SAFETY AND
WELFARE COMMISSION ”.

Section 9 amended

10. (1) Section 9 of the principal Act is amended in subsection (1) by deleting “and Safety” and substituting the following—

“ , Safety and Welfare ”.

(2) The amendment effected by subsection (1) does not affect the continuity nor the tenure of the office the title of which is changed.

Section 14 amended

11. Section 14 of the principal Act is amended in subsection (2) by deleting “shall” and substituting the following—

“ may ”.

Section 18 amended

12. Section 18 of the principal Act is amended by inserting after subsection (3) the following subsection—

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

Parts III to VIII inserted

13. After section 18 of the principal Act the following Parts are inserted—

“ PART III—GENERAL PROVISIONS RELATING TO
OCCUPATIONAL HEALTH, SAFETY
AND WELFARE

Duties of employers

19. (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 health and safety representatives, if any, and other employees at his workplace, regarding occupational health, safety and welfare 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
 - (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) Where an accident occurring at a workplace results in—

- (a) the death of an employee; or
- (b) injury to an employee of such kind as may be prescribed in the regulations,

his employer 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) or (3) commits an offence.

Duties of employees

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

(a) to ensure his own health and safety at work; and

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

(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 health or safety or for the health or safety 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;
- (c) misuses or damages any equipment provided in the interests of health, safety or welfare; 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.

Duties of employers and self-employed persons

21. (1) An employer or a self-employed person shall—

- (a) take reasonable care to ensure his own health and safety at work; and
- (b) so far as is practicable, ensure that the health or safety 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.

Duties of occupiers

22. (1) A person who has the management or control of a workplace shall take such measures as are practicable to ensure that the workplace and means of access to and egress from the workplace are such that persons who—

(a) are at the workplace; or

(b) use the means of access to and egress from the workplace,

are not exposed to hazards.

(2) A person who contravenes subsection (1) commits an offence.

Duties of manufacturers, etc.

23. (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 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); and

(iii) the conditions necessary to ensure that persons properly using the plant are not, in so doing, exposed to hazards,

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.

(4) A person who contravenes subsection (1), (2) or (3) commits an offence.

Resolution of issues at the workplace

24. (1) Where an issue relating to occupational health, safety or welfare arises at a workplace the employer shall, in accordance with the relevant procedure, attempt to resolve the issue with—

(a) the health and safety representative;

(b) the health and safety 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 health and safety representative and a health and safety committee in respect of the workplace concerned, the health and safety representative shall refer the issue to the health and safety committee for it to attempt to resolve the issue.

(4) A person who contravenes subsection (1) or (3) commits an offence.

25. (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 or a health and safety representative 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.

Refusal by employees to work in certain cases

26. (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.

(2) An employee who refuses to work as mentioned in subsection (1) shall forthwith notify his employer and, if there is a health and safety representative for the workplace concerned, such health and safety representative, and the matter shall be regarded as an issue to which section 24 (1) applies.

(3) An employee who contravenes subsection (2) commits an offence.

Assignment of other work

27. 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.

Entitlements to continue

28. (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.

(2) A dispute arising as to—

(a) whether a person is entitled to any pay or benefit;

(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 the Industrial Relations Commission.

PART IV—HEALTH AND SAFETY REPRESENTATIVES
AND COMMITTEES

Notices requiring election of health
and safety representatives

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

Consultation on matters relevant to elections

30. (1) Where an employer is given notice under section 29 requiring the election of a health and safety representative, he shall, within 21 days of being given the notice, invite the appointment of a delegate or delegates in accordance with subsection (2) or (3), as the case requires, and shall consult with that delegate or those delegates, as the case may be, as to the matters requiring to be determined under this section.

(2) Where any of the employees who work at a workplace is not a member of a trade union, those employees may, upon being invited under subsection (1) to do so, appoint a delegate from amongst their number to represent them.

(3) Where any of the employees who work at a workplace is a member of a trade union, that trade union, or where there are 2 or more such trade unions, each of those trade unions, may upon being invited under subsection (1) to do so, appoint a delegate from amongst its members who work at the workplace to represent them.

(4) The matters requiring to be determined under this section in relation to an election are—

- (a) the number of health and safety representatives to be elected;
- (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) where none of the employees who work at a workplace is a member of a trade union, 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 (1) may request that an election to be held under this section be conducted by the Commissioner.

(6) Any matter mentioned in subsection (4) that remains unresolved notwithstanding attempts to resolve it under subsection (1) may be referred to the Commissioner who may, if he is unable to resolve the matter to the satisfaction of each of the parties concerned, refer the matter to the Industrial Relations Commission for determination.

(7) An employer who contravenes subsection (1) commits an offence.

Election of health and safety representatives

31. (1) In this section “election” means an election required for the purpose of electing a health and safety representative for the workplace concerned.

(2) Where none of the employees who work at a workplace is a member of a trade union, an election shall be conducted as determined under section 30.

(3) Where any of the employees who work at a workplace is a member of a trade union, that trade union, or, where there are 2 or more such trade unions, one of those trade unions as agreed between them, may conduct an election.

(4) In the case referred to in subsection (3), where—

- (a) the trade union requests, or, if there are 2 or more of them, those trade unions, by agreement, request, that the Commissioner conduct an election; or
- (b) the trade union does not indicate, or, if there are 2 or more of them, neither of those trade unions indicates, within 21 days of receiving an invitation under section 30 (1), that an election is to be conducted by a trade union,

the election shall be conducted by the Commissioner.

(5) Where members of 2 or more trade unions work at a workplace and there is any dispute as to who is to conduct an election, the dispute may be referred to the Commissioner who may, if he is unable to resolve the matter to the satisfaction of the parties concerned, refer the matter to the Industrial Relations Commission for determination.

(6) Subject to this section, health and safety 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, where any of the parties consulting under section 30 to determine matters in relation to that election so requires, the election shall be by secret ballot.

(8) A person is not eligible to be elected as a health and safety 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 health and safety representative—

- (a) a ballot need not to be held; and
- (b) that candidate shall be deemed to have been duly elected.

(10) A trade union conducting an election shall notify the employer concerned of the results of the election.

(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 may, if he is unable to resolve the matter to the satisfaction of the persons concerned, refer the matter to the Industrial Relations Commission for determination.

Terms of office

32. (1) A person who is elected as a health and safety representative holds office, subject to this Act, for a term of 2 years.

(2) A person ceases to hold office as a health and safety 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.

Functions of health and safety representatives

33. (1) The functions of a health and safety representative are, in the interests of health and safety at the workplace for which he was elected—

- (a) to inspect the 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 health and safety 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 health and safety 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 health, safety or welfare of persons in the workplace;
- (g) liaise with the employees regarding matters concerning the health, safety or welfare of persons in the workplace.

(2) A health and safety representative for a workplace has such powers as are necessary for the carrying out of his functions under this Part and in particular, but without limiting the generality of the foregoing, may—

- (a) where requested to do so by an inspector, accompany an inspector while the inspector is carrying out, at the workplace, any of his functions under this Act;
- (b) request the employer to establish a health and safety committee for the workplace at which there are in excess of 10 employees.

(3) A health and safety representative incurs no civil liability arising from his performance of, or his failure to perform, any function of a health and safety representative under this Act.

Disqualification of health and safety representatives

34. (1) A party mentioned in subsection (2) may refer to the Industrial Relations Commission the question of whether a health and safety 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;
- (b) he has used or disclosed any information acquired from his employer in his capacity as a health and safety 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 health and safety representative may be made by—

- (a) his employer;
- (b) any trade union a member of which works at the workplace concerned; or
- (c) the Commissioner.

(3) If, upon a reference under subsection (1), the Industrial Relations Commission is satisfied that grounds for the disqualification of the health and safety representative exist, it may disqualify him for a specified period, or permanently, from holding office as a health and safety representative.

(4) In determining what disqualification, if any, should be imposed under subsection (3), the Industrial Relations Commission 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 health and safety representative in performing his functions under this Act; and
- (c) whether the health and safety representative acted contrary to the public interest,

and may take into account any other matters that it considers relevant.

Certain duties of employers in relation
to health and safety representatives

35. (1) Where there is any health and safety representative for a workplace the employer shall—

- (a) subject to subsection (2), make available to each health and safety 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 health and safety of employees who work at the workplace;
- (b) where an employee so requests, permit a health and safety representative to be present at any interview concerning occupational health, safety or welfare between the employer or his representative and the employee;
- (c) consult with health and safety 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 health, safety or welfare of employees at the workplace;
- (d) permit a health and safety 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 health and safety 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);
- (f) where any accident or dangerous occurrence takes place in a part of the workplace where employees who are represented by a health and safety representative work, ensure that the health and safety representative is notified thereof forthwith; and

- (g) provide health and safety 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 health and safety 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 health and safety 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 health and safety 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 health and safety representative than that prescribed in the regulations, by agreement with the employer concerned or by a determination made by the Industrial Relations Commission upon a reference made to it under this subsection by the employer, the health and safety representative, or the Commissioner.

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

Requests for health and safety committees
to be established

36. (1) A health and safety representative for a workplace at which there are in excess of 10 employees may request the employer to establish a health and safety committee for the workplace under this Part.

(2) Where an employer has been requested by a health and safety representative under subsection (1) to establish a health and safety committee, the employer shall, within 21 days of the request—

- (a) notify the health and safety representative that he agrees to the request; or
- (b) where he considers that the circumstances of his case are such that a health and safety 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 health and safety representative 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 health and safety representative concerned of his decision.

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

Establishment of health and safety committees

37. (1) An employer shall, in accordance with this Part and the regulations, establish a health and safety committee within 3 months of—

- (a) the coming into operation of a regulation requiring him to do so;
- (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 health and safety 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 health and safety committee at any time in accordance with this Act.

Composition of health and safety committees

38. (1) A health and safety committee for a workplace shall consist of—

- (a) the health and safety representatives, if any;
- (b) the person or persons elected by the employees for the purposes of this section; and
- (c) the person or persons nominated by the employer for the purposes of this section.

(2) Subject to this section, the number of persons to be elected by the employees or appointed by the employer for the purposes of this section shall be as is agreed between the employer and the health and safety representative or, where there are 2 or more of them, the health and safety representatives, for the workplace concerned.

(3) Where there is no health and safety representative for the workplace or there is failure to agree the matter under subsection (2), the number of persons to be elected by the employees or 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 health and safety committee shall be health and safety representatives or 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 health and safety committee for a workplace unless he is an employee who works at the workplace, and the person or persons nominated by the employer shall be, or shall include, a person or persons having the authority of the employer to give effect to such matters as the committee might reasonably resolve in connection with the health, safety and welfare of persons at the workplace.

Review of Commissioner's decision

39. An employer, a health and safety representative, or a trade union any member of which works at a workplace may refer to the Industrial Relations Commission for review by it any decision of the Commissioner as to—

- (a) whether or not it would be appropriate for a health and safety 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 health and safety committee.

Functions of health and safety committees

40. The functions of a health and safety 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 health, safety and welfare of employees at the workplace; .
- (b) to keep itself informed as to standards relating to health, safety and welfare 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 health, safety and welfare 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 health, safety and welfare 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 health, safety or welfare of employees at the workplace;
- (f) to consider such matters as are referred to the committee by a health and safety 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.

Meetings

41. (1) Subject to subsection (2) and to the regulations a health and safety committee may determine its own procedures.

(2) Each health and safety committee shall meet at intervals not exceeding 3 months.

PART V—INSPECTORS

Appointment

42. (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.

Powers

43. (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 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.

Interpreters

44. 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.

Notification by inspector

45. (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 health and safety representative thereof, or, if there are 2 or more health and safety 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 health and safety representative or health and safety 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 health and safety 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.

Samples

46. (1) Where an inspector takes a sample under this Act in relation to a workplace, 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) 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 health and safety representative concerned of the results of the analysis.

Offences

47. (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;
- (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.

PART VI—IMPROVEMENT AND PROHIBITION NOTICES

Inspectors may issue improvement notices

48. (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 the reasons for 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 section 51, may be exercised.

(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.

(4) Subject to section 51, 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) commits an offence.

Inspectors may issue prohibition notices

49. (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 the 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 the reasons for 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 section 51, may be exercised.

(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.

(5) Subject to section 51, 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) commits an offence.

Notices may include directions

50. (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.

Review of notices

51. (1) A person to whom an improvement notice or prohibition notice is issued or, where that person is an employee, his employer may, in accordance with this section, refer the notice for review.

(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) The reference of an improvement notice for review is made to the Commissioner.

(4) The reference of a prohibition notice for review is made to the Industrial Relations Commission and a copy of the reference shall be given by the applicant to the Commissioner.

(5) On the reference under this section of an improvement notice or a prohibition notice for review, the Commissioner or, as the case may be, the Industrial Relations Commission 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 the notice shall have effect or, as the case may be, cease to have effect, accordingly.

(6) In dealing with a reference for the review of a prohibition notice the Industrial Relations Commission may refer to an expert chosen by it such matters as to it appear appropriate, and the report of any such expert may, in accordance with section 27 (1) (i) of the *Industrial Relations Act 1979*, be accepted as evidence.

(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 Industrial Relations Commission.

PART VII—LEGAL PROCEEDINGS

Prosecutions

52. (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 court of summary jurisdiction composed of a magistrate.

(3) Proceedings for a contravention of section 19 (3) may be commenced at any time within 2 years after the offence was committed and not afterwards.

Evidentiary provisions

53. 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 the management or control of 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,

shall be deemed to be proved in the absence of proof to the contrary.

Penalties

54. The penalty for an offence against this Act is—

- (a) where the offence is committed by a person as an employee—a fine of \$5 000 and, if it is a continuing offence, a daily penalty of \$50;
- (b) in any other case—a fine of \$50 000 and, if it is a continuing offence, a daily penalty of \$250.

Offences by bodies corporate

55. (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.

PART VIII—MISCELLANEOUS

Discrimination

56. (1) An employer or prospective employer who in any way treats an employee or prospective employee less favourably than he otherwise would by reason only that the employee or prospective employee—

- (a) is or has been a health and safety representative or a member of a health and safety committee;
- (b) performs or has performed any function as a health and safety representative or a member of a health and safety committee;
- (c) gives or has given assistance or information to an inspector, health and safety representative or any member of a health and safety committee;
- (d) makes or has made a complaint in relation to health, safety or welfare to a person who is or was his employer or fellow employee or an inspector, a health and safety representative or a member of a health and safety committee,

commits an offence.

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

Codes of practice

57. (1) For the purpose of providing practical guidance to employers, self-employed persons, and employees, 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 health, safety or welfare 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.

(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. ”.

Section 19 renumbered

14. Section 19 of the principal Act is amended by deleting the section designation “19.” and substituting the section designation “58.”.

Section 20 amended and renumbered

15. Section 20 of the principal Act is amended—

- (a) by deleting the section designation “20.” and substituting the section designation “59.”;
- (b) by inserting after “Commission”, in the first place where it occurs, the following—

“ or an inspector ”; and
- (c) by deleting “or the Commission” and substituting the following—

“ , the Commission or an inspector ”.

Section 21 amended and renumbered

16. Section 21 of the principal Act is amended—

- (a) by deleting the section designation “21.” and substituting the section designation “60.”;
- (b) in subsection (2), by deleting “19” and substituting the following—

“ 58 ”; and
- (c) by inserting after subsection (4) the following subsection—

“ (5) Without affecting the generality of subsection (1) regulations may be made with respect to any of the matters specified in the Schedule. ”.

Section 22 renumbered

17. Section 22 of the principal Act is amended by deleting the section designation “22.” and substituting the section designation “61.”.

Schedule added

18. At the end of the principal Act the following Schedule is added—

“

SCHEDULE

SUBJECT MATTER FOR REGULATIONS

- 1. Health, safety and welfare 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; or
 - (f) in the design, manufacture, importing or supplying of any substance.
- 2. The safeguarding, siting, installing, testing, altering, repairing, maintaining or dismantling of any plant.

3. The testing, analysis, labelling or marking of any 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 the supervision of persons with prescribed qualifications, training or experience.
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 health, safety or welfare 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 health, safety and welfare 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 health, safety and welfare 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 welfare 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).
25. The provision by an employer to his employees, in such languages as may be appropriate, of information relating to health, safety and welfare in connection with the work carried out by the employee.
26. Procedures that are to be carried out on inspections under this Act.
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.
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 to *Parliamentary Commissioner Act 1971* amended

19. The Schedule to the *Parliamentary Commissioner Act 1971** is amended by inserting before the item relating to the Painters' Registration Board the following item—

" The Occupational Health, Safety and Welfare Commission established under the *Occupational Health, Safety and Welfare Act 1984* and any advisory committee appointed under that Act. "

[*Reprinted as approved 19 July 1983 and amended by Acts Nos. 124 of 1984, 69, 92, 98, 107 and 110 of 1985 and 39, 51, 94 and 101 of 1986.]
