

MACHINERY SAFETY.

No. 74 of 1974.

AN ACT to provide for the safe design, construction, installation, and operation of machinery, for the inspection of machinery and the conditions under which it is used, and for the safety of persons; to repeal the Inspection of Machinery Act, 1921-1969; and for incidental and other purposes.

[Assented to 10th December, 1974.]

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:—

PART I.—PRELIMINARY.

1. This Act may be cited as the *Machinery Safety Act, 1974.* Short title.

Commence-
ment.

2. The several provisions of this Act shall come into operation on such dates respectively as may be fixed by proclamation in relation to each of those provisions.

Arrange-
ment.

3. The arrangement of this Act is as follows—

PART I.—PRELIMINARY, ss. 1-8;

PART II.—ADMINISTRATION, ss. 9-10;

PART III.—REGISTRATION AND CERTIFICATION,
ss. 11-21;

PART IV.—INSPECTION, ss. 22-34;

PART V.—CERTIFICATES OF COMPETENCY, ss. 35-52;

PART VI.—APPEALS, ss. 53-55;

PART VII.—SAFETY PROVISIONS, ss. 56-68;

PART VIII.—ACCIDENTS, ss. 69-74;

PART IX.—RURAL MACHINERY, ss. 75-77;

PART X.—ENFORCEMENT AND REGULATIONS, ss.
78-88.

SCHEDULE.

Repeal and
savings.

4. (1) The Acts specified in the Schedule to this Act are hereby repealed.

(2) Without limiting the operation of the provisions of the Interpretation Act, 1918, it is hereby declared that the repeal of any Act by this Act does not affect any document made or any thing done under the Act so repealed, and each such document or thing, so far as it is subsisting or in force at the time of the repeal and could have been made or done under this Act, shall continue and have effect as if it had been made or done under the corresponding provision of this Act, and as if that provision had been in force when the document was made or the thing was done.

(3) Without affecting the generality of subsection (2) of this section, until regulations are made under this Act, the regulations made under the Acts repealed by this Act, and in force at the time this Act comes into operation, shall apply, so far as applicable, to persons, acts, circumstances and things under this Act, as if those regulations were made under this Act.

5. This Act binds the Crown.

Act binds
the Crown.

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

Interpreta-
tion.

“Board of Reference” means a Board constituted to hear appeals pursuant to section 54;

“boiler” means any vessel in which for any purpose steam or vapour is generated or is intended to be generated or water or other liquid is heated or intended to be heated, at a pressure above that of the atmosphere, by the application of fire, the products of combustion, or electrical means; the term includes any economiser or superheater or any feed, blowdown, mountings, fittings, connections or ancillary plant or apparatus necessary for the efficient and safe working of a boiler, including distribution pipelines; but the term does not include a fully flooded system or pressurised system where the water is or is intended to be heated to a temperature less than ninety-nine degrees celsius;

“certificate of competency” means a certificate granted by the Chief Inspector pursuant to section 39, but where a certificate is endorsed with a reference to any restriction, limitation or condition means the certificate as so subject;

“certificate of inspection” means a certificate granted by the Chief Inspector under section 16, but where a certificate is endorsed

with a reference to any restriction, limitation or condition means the certificate as so subject;

“certificate of registration” means a certificate granted by the Chief Inspector under section 13, but where a certificate is endorsed with a reference to any restriction, limitation or condition means the certificate as so subject;

“Chief Inspector” means the person appointed or deemed to be appointed Chief Inspector of Machinery under this Act;

“classified machinery” means a boiler, pressure vessel, crane, lift, escalator, or other machinery classified by the Chief Inspector under section 11 as machinery which shall not be used or operated unless there is in force in relation thereto a valid certificate of inspection;

“conveyor” means a mechanical contrivance driven by power and used or designed for raising, lowering or transporting any load, and includes an endless belt, rope or chain, rotating screw, or similar contrivance and any equipment associated with the operation thereof; but the term does not include a crane, hoist, lift, or escalator;

“crane” means a structure equipped with mechanical means for moving or placing a load by raising, lowering or transporting it, and includes machinery or associated lifting apparatus necessary for its operation and the supporting structure and foundations; but the term does not include a hoist, lift, escalator, or conveyor, or any earthmoving machinery other than an excavator equipped with a jib or boom;

“escalator” means a power driven inclined continuous stairway used for raising or lowering passengers and includes a moving walkway or moving ramp;

“fence” means any form of protective device designed to prevent bodily injury and includes a guard or guard rail;

“hoist” means any mechanical contrivance, other than a crane, lift, escalator, or conveyor, the principal function of which is the raising or lowering or conveying of men, goods, or materials; the term includes men and materials hoists and builders’ hoists of every kind and all the equipment associated with the operation of a hoist, whether detachable or not, and any part of the structure or supporting structure which is stressed by the hoist under working conditions;

“inspector” means a person appointed or deemed to have been appointed as an inspector of machinery under this Act and includes the Chief Inspector and any person appointed for the time being to perform the whole or any part of the duties of an inspector;

“internal combustion engine” includes a compression ignition engine, a gas engine and a gas turbine;

“lift” means any machinery, not being a hoist or machinery used for constructing raises in a mine, having an enclosed platform or cage the direction or movement of which is restricted by a guide or guides, and which is used or capable of being used for the purpose of raising or lowering men, goods, or materials; the term includes all machinery, supports, enclosures, and associated equipment, whether detachable or not, used for the purpose of operating the lift;

“locomotive” means a vehicle propelled by its own motive power and running on rails, which is used primarily for the haulage of wagons or other rolling stock; but the term

does not include a special vehicle used solely for the maintenance or inspection of the rail tracks, and which does not haul other rolling stock;

“machinery” means any boiler, pressure vessel, engine, motor, crane, conveyor, hoist, lift, escalator, machine, gearing, or mechanical appliance constructed of any material and worked or capable of being worked by any kind of power, and any supporting structure stressed by its operation;

“owner”, used in relation to machinery, means the person to whom it belongs or the hirer, lessee, borrower, bailee, or mortgagee in possession, thereof and includes any attorney, agent, manager, foreman, supervisor or other person in charge of, or having control or management of, that machinery;

“place” means any structure or area, enclosed or otherwise, whether above or below ground, wherein or whereon any machinery is erected, or is being erected, kept, used, worked, or is in operation; and without limiting the generality of the foregoing interpretation, the term includes any road, street, house, or building, and any ship, raft, punt, hulk or boat not propelled by its own motive power, wherein or whereon any machinery is erected, or is being erected, kept, used, worked or is in operation;

“pressure vessel” means any closed vessel, or vessel open to the atmosphere, not being a vessel heated by the application of fire or the products of combustion or electrical means, and which is a vessel subject or intended to be subjected to a pressure greater than atmospheric pressure, including pressure due to static head, by liquid, steam, air, vapour, gas or gaseous substance; the term includes all mountings,

fittings, pipelines and ancillary equipment associated with the vessel for safe operation; but the term does not include—

- (a) a receptacle commonly known as a pressure pack, or a pipeline constructed under the provisions of any other Act; or
- (b) a compressed air line, a water line, or a pneumatic loader of explosives when used in a mine;

“record” includes any document, drawing, form, specification, certificate, report, film or information which is required to be produced to an inspector;

“rural employee” includes all persons employed in rural industry other than those persons who have an ownership interest in the major capital holding of a rural industry, and for the purpose of this provision a person who is granted a part share in a rural industry under the terms of his employment and who relinquishes that share upon termination of his employment shall not be taken to have an ownership interest;

“rural industry” means any industry in which persons are engaged for hire or reward, whether as employees or otherwise,—

- (a) upon any farm, orchard, vineyard, agricultural holding or pastoral holding in connection with dairying, poultry farming, bee farming, or the sowing, raising, harvesting or treating of grain, fodder, sugar cane, fruit, cotton, or other crop or farm produce, whether grown for food or not, or the management, rearing or grazing of horses, cattle, sheep or other livestock, or the shearing or crutching of sheep, or the classing, scouring,

sorting or pressing of wool, upon any farm or station, or at any other farm or station work; or

(b) in flower or vegetable market gardens or nurseries; or

(c) at clearing, fencing, trenching, draining, or otherwise preparing land for any purpose hereinbefore mentioned;

“rural machinery” means machinery used within a rural industry but does not include any boiler, crane, hoist, steam engine or pressure vessel;

“section” means section of this Act;

“serious bodily injury” means an injury that is likely to incapacitate the person suffering the injury from working at his ordinary occupation and earning his usual rate of remuneration for a period of three days or more;

“steam engine” includes a steam turbine;

“the repealed Acts” means the Acts referred to in section 4;

“the Under Secretary” means the person holding the office of Under Secretary in the Department of Labour and Industry in the Public Service of the State, or, if at any time there is not an office of that name, the person for the time being occupying the office substituted therefor;

“to erect” includes to manufacture, to construct, to set up, to set or place in position, to instal, and similar connotations;

“winding engine” means any engine used for raising or lowering men or materials in any vertical or inclined shaft on any mine, sewerage or other works, and whether erected on the surface or underground;

“working conditions”, used in relation to the state of machinery, includes any conditions where machinery is subject to stresses or

capable of being subject to stresses by virtue of its operation or readiness for operation.

(2) In this Act a reference—

- (a) to a failure to do any act or thing, includes a reference to a refusal or neglect to do that act or thing;
- (b) to the contravention of any provision, term or condition includes a failure to comply with, observe or carry out that provision, term or condition.

(3) Where a meaning is assigned to any term by this section cognate expressions used in this Act, unless a contrary intention appears, have a corresponding meaning.

7. (1) Subject to the provisions of this section, section 35 and section 75, this Act applies to machinery of every kind.

Applica-
tions.

(2) Unless the context or a specific provision otherwise requires, this Act does not apply to machinery of the kind referred to in this subsection namely—

- (a) machinery driven by treadle, wind, or animal power;
- (b) machinery driven by hand, not being a crane designed for loads exceeding one tonne;
- (c) machinery driven by an electric motor of which the power is less than 0.75 kilowatts, not being a self contained hoist or lift;
- (d) rural machinery, other than as required under Part IX of this Act;
- (e) machinery driven by an internal combustion engine, or by electricity, used exclusively by a miner or prospector in the pursuit of his calling and on which no labour for reward is employed;

- (f) traction machinery, not being a locomotive, used solely for traction purposes and driven otherwise than by steam;
- (g) machinery used or intended to be used on or employed in the operation of Government railways under the control of the Commissioner of Railways;
- (h) machinery used exclusively for domestic purposes;
- (i) any motor vehicle, launch or boat driven or propelled by an internal combustion engine or steam or electricity, not being a motor vehicle driven by steam and used for carrying passengers or goods for reward;
- (j) machinery used or intended to be used on any ocean going ship or steamship;
- (k) any machinery of any floating crane, barge or similar kind of marine craft not directly driven or propelled by motive power and which is subject to the provisions of the Western Australian Marine Act, 1948; and
- (l) such other machinery as is prescribed.

Act No. 72
of 1948.

Exemptions.

(3) The Governor may by Order in Council declare that this Act, or any provision of this Act specified in the Order, shall not apply to any machinery or class of machinery of a kind specified in the Order, and may by subsequent Order in Council from time to time amend, vary or revoke such Order in Council.

(4) The provisions of this Act shall not be construed as limiting or affecting the provisions of any other Act the administration of which has been placed under the control of the Minister responsible for mining matters.

8. Where the Minister is satisfied that any machinery—

Exemption
from fees.

- (a) is owned by a charitable institution or organisation; or
- (b) is used solely for the purpose of education or instruction,

he may, by notice in the *Gazette*, grant, to any person who would otherwise be liable to pay any application, registration, inspection, or other fee under this Act in relation to that machinery, an exemption from that liability.

"This Act"
includes
regulations.
See s. 4 Act
No. 30 of
1918.

PART II.—ADMINISTRATION.

Administra-
tion.

9. (1) This Act shall be administered by the Minister, and subject to any direction of the Minister, by the Under Secretary.

(2) The costs and expenses incurred in the administration of this Act shall be defrayed out of moneys to be provided by Parliament for that purpose.

(3) To assist the Minister in the administration of this Act there shall be a Board, to be called the Machinery Safety Advisory Board, which shall consist of—

- (a) the Under Secretary, who shall be Chairman; and
- (b) two other members appointed by the Governor for a term of five years and eligible to be re-appointed on the expiration of their term of office.

(4) The members of the Board appointed by the Governor shall be persons who have indicated in writing their willingness to act as a member of the Board of whom—

- (a) one shall be selected on the joint written nomination of the bodies respectively known as the Western Australian Employers' Federation (Incorporated) and The West Australian Chamber of Manufactures (Incorporated) to represent the owners of machinery to which this Act applies; and
- (b) one shall be selected on the written nomination of the body known as The Trades and Labor Council of Western Australia to represent employees engaged in work with or on machinery to which this Act applies.

(5) The Governor may appoint a person selected and nominated in the like manner to act as the deputy of an appointed member of the Board while that member is incapacitated by illness or other sufficient cause from performing the duties of his office, and a reference in this section to a member shall be construed as including a reference to a deputy acting in the place of that member.

(6) If after the expiration of thirty days, or such longer period as the Minister may allow, following the written request of the Minister so to do a body having the right to nominate an appointed member has failed to submit a nomination, the Minister may recommend for appointment such person as he thinks fit.

(7) The Chairman of the Board—

- (a) may at any time convene a meeting of the Board;
- (b) shall preside at all meetings at which he is present; but

- (c) may appoint in writing some other person to attend and act in his place at any meeting and that person, when so acting, shall for all purposes be deemed to be the Chairman.

(8) If a member of the Board ceases to hold office before the expiration of the period of his appointment another person may, in accordance with this section, be appointed in his place for the remainder of that period.

(9) If a member of the Board other than the Chairman—

- (a) is an undischarged bankrupt or a person whose property is subject to an order or arrangement under the laws relating to bankruptcy;
- (b) is absent, except on leave granted by the Board, from three consecutive meetings of the Board;
- (c) resigns his office by writing under his hand delivered to the Minister; or
- (d) has his appointment terminated by the Governor for inability, inefficiency or misbehaviour,

his office becomes vacant and he is not eligible for re-appointment.

(10) Each member of the Board shall be paid such fees or remuneration and such travelling and out of pocket expenses as the Minister may approve.

(11) No question shall be decided by the Board unless the three members of the Board are present at the meeting when the question is being decided, but the question may be decided by a majority of the votes of the members voting.

(12) With the consent of the Minister administering that department, the Board may co-opt the services of any person employed in a department of the Public Service of the State upon such terms as may be agreed between that Minister and the Minister.

(13) The Board shall in relation to any machinery to which this Act applies—

- (a) collaborate with organisations of employers and owners of machinery, and of employees, and with authorities and bodies engaged in technical research;
- (b) investigate and report on any question referred to the Board by the Minister relating to machinery safety matters;
- (c) investigate and make recommendations to the Minister with regard to all measures necessary for securing the safety of persons engaged in work with, on or in the vicinity of that machinery, including—
 - (i) the prevention or diminution of noise;
 - (ii) the prevention of accidents;
 - (iii) the supply and use of protective clothing and protective equipment;
 - (iv) the making, amending or revoking of regulations; and
- (d) carry out such other functions as may be prescribed.

(14) The Board, or any member of the Board who is authorised in writing by the Chairman so to do, may at any reasonable time exercise the right of an inspector to enter upon any place or premises for the purposes of inspection, examination and inquiry and in relation thereto shall enjoy the like protection from liability.

10. The Under Secretary shall make, in each year, a written report to the Minister as to the administration of this Act, and the report shall be made before the first day of October in each year.

Annual report as to administration of the Act.

PART III.—REGISTRATION AND CERTIFICATION.

Registration.

11. (1) The prescribed particulars of all machinery to which this Act applies shall be entered in a Register to be maintained by the Chief Inspector.

(2) At the time of the first entry of the particulars relating to any machinery in the register the Chief Inspector shall determine whether it is to be treated as—

- (a) classified machinery, being a boiler, pressure vessel, crane, lift, escalator or other machinery which shall not be used or operated unless there is in force in relation thereto a valid certificate of inspection; or
- (b) machinery in relation to which no certificate of inspection is required.

(3) The registration of classified machinery does not require renewal and continues in force for so long as a valid certificate of inspection in relation thereto continues in force, but no longer.

(4) The registration of machinery in relation to which no certificate of inspection is required continues in force from the date on which the registration is effected—

- (a) for such period, being a period of not more than eighteen months, as the Chief Inspector enters in the Register; or
- (b) until sooner suspended or cancelled by an inspector in accordance with the provisions of section 32.

(5) The Chief Inspector shall give notice in writing to the owner of any machinery registered—

- (a) as to whether it is to be treated as classified machinery; or
- (b) as to the date of the expiry of the period of registration effected in relation thereto.

Applica-
tions.

12. (1) An application for the registration of any machinery under this Act, or for the renewal of a registration, shall be made by the owner to the Chief Inspector in the prescribed manner accompanied by the prescribed fee.

(2) If the machinery on the date of coming into operation of this section is not in or on a place or premises in respect of which the owner is registered as occupier under the Factories and Shops Act, 1963, and was immediately prior thereto the subject of a valid certificate of inspection issued under the repealed Acts,—

- (a) no application for registration under this Act is required from the owner; and
- (b) the Chief Inspector shall enter the prescribed particulars in the Register and shall notify the owner in writing that the entry has been effected.

(3) If the machinery on the date of coming into operation of this section is in or on a place or premises in respect of which the owner is registered as the occupier under the Factories and Shops Act, 1963, the owner shall apply for registration of the machinery under this Act on the occasion of the next application for the renewal of the registration under that Act.

(4) If the provisions of subsection (2) or subsection (3) of this section do not apply to any machinery, the owner of that machinery shall apply for registration of it under this section—

- (a) within three months of the date of coming into operation of this Act; or
- (b) within fourteen days of becoming the owner of it; or
- (c) if the machinery was previously classified machinery, within fourteen days of it ceasing to be classified machinery,

whichever is the later.

(5) Subject to this Act, a renewal of the registration of any machinery on or before the date of expiry continues that registration in force for the period entered in the Register at the time of renewal, and so on accordingly.

13. (1) The Chief Inspector, upon being satisfied that the requirements of this Act as to any application for registration or for the renewal of a registration and for the payment of the prescribed fees have been complied with, and that there are no grounds upon which the application ought to be refused, shall enter the prescribed particulars in the Register and shall return to the owner one copy of the application form, endorsed with a receipt for the payment of the prescribed fees, by way of a certificate of registration.

Registration procedure.

"This Act" includes regulations. See s. 4 of Act No. 30 of 1918.

(2) The Chief Inspector may, in writing, at any time after the receipt of an application for the registration of, or for the renewal or amendment of

a registration in respect of, any machinery, require the applicant to furnish him with additional information.

(3) Particulars of any limitation, restriction or condition to which in the opinion of the Chief Inspector the registration ought to be made subject shall be entered in the Register and may be endorsed on the certificate of registration.

Refusal of,
and condi-
tional regis-
tration.

14. Where the Chief Inspector refuses an application for registration, or renewal of registration, or for the amendment of a registration, or makes any registration subject to a limitation, restriction or condition, he shall notify the applicant, in writing, and the notification shall be accompanied by a written statement of the grounds upon which the decision was made.

Offences as
to registra-
tion.

15. (1) The requirement that any machinery be registered under this Act commences on the date specified in relation thereto by section 12 and remains in force for so long as that machinery is capable of being used.

(2) A person who uses or operates any machinery liable to be registered under this Act—

(a) which is not so registered; or

(b) otherwise than in accordance with any limitation, restriction or condition that is entered in the Register in relation thereto,

commits an offence, unless he has been authorized in writing by an inspector so to do.

Certification
procedure.

16. (1) Where an application is made for the grant or renewal of a certificate of inspection in relation to classified machinery and the Chief Inspector is satisfied—

(a) that a notice giving directions to stop the use or operation of the machinery is not required; and

- (b) that the machinery is safe for the purpose intended,

he shall, on payment of the prescribed fee, grant to the owner a certificate of inspection in the prescribed form.

(2) A certificate of inspection may be granted subject to any limitation, restriction or condition which the Chief Inspector thinks necessary and endorses thereon.

(3) A certificate of inspection continues in force from the date of issue—

- (a) for such period, being a period of not more than eighteen months, as the Chief Inspector considers appropriate and endorses on the certificate; or
- (b) until sooner suspended or cancelled by an inspector in accordance with the provisions of section 32.

(4) A certificate of inspection issued under the provisions of the repealed Acts and still in force shall be deemed to have been granted under this Act.

17. (1) Where any machinery to which a certificate of inspection relates has not been inspected and the certificate of inspection would otherwise expire within twenty-eight days the owner of the machinery may apply in writing to the Chief Inspector for the issue of a further certificate by way of renewal.

Renewal of
certificate of
inspection.

(2) An application for the renewal of a certificate of inspection shall be accompanied by a statement signed by the owner of the machinery specifying—

- (a) whether any and what repairs, alterations or additions have been made in or to the machinery since the date of issue of the certificate of inspection then in force;

- (b) whether any and what stoppages have occurred and the reasons attributed for them; and
- (c) whether or not the owner is satisfied that the machinery is in a safe condition and fit to be safely used for the purpose for which it is intended.

Refusal of,
and condi-
tional,
certification.

18. Where the Chief Inspector refuses an application for the grant or renewal of a certificate of inspection, or grants a certificate subject to a limitation, restriction or condition, he shall notify the applicant, in writing, and the notification shall be accompanied by a written statement of the grounds upon which the decision was made.

Offences as
to certifi-
cates.

19. (1) Where, during the period of twenty-eight days immediately following the expiry of the last certificate of inspection in relation to any machinery, a person would otherwise be liable for an offence against this section it is a defence for him to show—

- (a) that no direction or order in respect of that machinery had been issued under section 30; and
- (b) that an application for the renewal of the certificate had been made and that he had received no notice of refusal.

(2) Subject to subsection (1) of this section, a person who—

- (a) owns any classified machinery which is capable of being used; or
- (b) uses or operates any classified machinery, without there being in force a valid certificate of inspection in relation thereto, commits an offence, unless he has been authorized in writing by an inspector so to do.

(3) A person who uses or operates any classified machinery otherwise than in accordance with any limitation, restriction or condition that is endorsed on the certificate of inspection in relation thereto commits an offence, unless he has been authorized in writing by an inspector so to do.

20. (1) Subject to subsection (2) of this section, where the owner of any machinery,—

Trans-
actions and
movements
to be noti-
fied.

(a) sells, leases, hires or otherwise deals in that machinery; or

(b) transfers any such machinery to another location,

he shall give notice specifying the particulars of that transaction or movement to the Chief Inspector.

(2) The provisions of this section do not apply to—

(a) machinery designed for mobile use which is transferred from one place to another on hire or otherwise but is from time to time returned to the owner for inspection and maintenance; or

(b) classified machinery in a mine or used in a petroleum drilling operation.

(3) For the purposes of this section a person shall be taken to deal in machinery if he, for or in the expectation of any remuneration or reward, parts with, transfers or confers a right to the use of that machinery.

(4) The Chief Inspector may, in writing, at any time after the receipt of a notice given under subsection (1) of this section, require the owner to furnish him with additional information.

Notice of permanent cessation of use.

21. The owner of any boiler, pressure vessel, crane, lift, escalator or other classified machinery shall give notice in writing to the Chief Inspector within twenty-eight days of the machinery permanently ceasing to be capable of being used.

PART IV.—INSPECTION.

Inspection of machinery.

22. All machinery, whether classified machinery or otherwise, may be inspected at any time if an inspector considers it to be necessary in the interests of safety.

Inspectors.

23. (1) There may, from time to time, be appointed under the Public Service Act, 1904, such number of inspectors of machinery as the Minister considers necessary for carrying out the provisions of this Act.

(2) One of the inspectors appointed under this section shall be appointed by the Minister to be the Chief Inspector of Machinery and another of them shall be so appointed Deputy Chief Inspector of Machinery, who—

(a) in the event of illness or absence of the Chief Inspector has and may exercise and perform the powers, authorities, duties and functions of the Chief Inspector under this or any other Act; and

(b) may at any time exercise any power of the Chief Inspector that the Chief Inspector, by instrument in writing, assigns to him, either generally or in any particular case.

(3) Without limiting the operation of section 4 of this Act—

(a) on the coming into operation of section 4 the persons who, immediately prior thereto were respectively the Chief Inspector of Machinery and the Deputy Chief Inspector of Machinery shall be deemed to have been

appointed the Chief Inspector of Machinery and Deputy Chief Inspector of Machinery under this Act; and

- (b) each person who, immediately before the date of coming into operation of section 4, was an inspector of any grade or class under any Act repealed by this Act shall, without further appointment under this Act, be deemed to be appointed on that date an inspector of the same grade or class in accordance with and for the purposes of this Act, and shall, subject to this Act, continue to hold his office under this Act.

(4) A person who is an inspector under the Factories and Shops Act, 1963, or the Construction Safety Act, 1972, may be appointed by the Minister to be an inspector for the purposes of this Act for such period as the Minister determines but he shall carry out only the powers, duties and functions that are, from time to time, by instrument in writing, assigned to him by the Chief Inspector.

Act No. 44
of 1963.
Act No. 13
of 1972.

(5) Every inspector shall be furnished with a certificate of his appointment in the prescribed form, and, on entering any place or premises for the purposes of this Act, he shall, if required by the owner or person in charge of the place or premises or any person to whom a direction or order is given by the inspector under this Act, produce the certificate to him.

(6) A person who forges or counterfeits any such certificate, or makes use of any forged, counterfeited or false certificate, or personates the inspector named in any certificate, or falsely pretends to be an inspector commits an offence against this Act.

Penalty: Five hundred dollars, or imprisonment for six months, or both such fine and imprisonment.

Delegation
by Chief
Inspector.

24. (1) The Chief Inspector may, by instrument in writing under his hand, delegate to any inspector, either generally or as specified in the instrument of delegation, any of his powers and functions under this Act except this power of delegation.

(2) A power or function so delegated may be exercised or performed by the delegate in accordance with the instrument of delegation, and if the exercise of any power or the performance of any function would, had it not been delegated, have depended upon the opinion, belief or state of mind of the Chief Inspector in relation to a matter, that power may be exercised or that function performed by the delegate upon the opinion, belief or state of mind of the delegate in relation to that matter.

(3) A delegation under this section is revocable at will and does not prevent the exercise of a power or the performance of a function by the Chief Inspector.

Principal
functions of
inspector.
"This Act"
includes
regulations.
See s. 4 Act
No. 30 of
1918.

25. The principal functions of an inspector under this Act are—

- (a) to promote the safety of persons engaged on machinery;
- (b) to promote the safety of persons and property in the vicinity of machinery;
- (c) to advise employers and employees as to safe practices recommended in respect of machinery;
- (d) to investigate accidents of any kind occurring in respect of every kind of machinery;
- (e) to ensure that the provisions of this Act are complied with; and
- (f) generally to take all such steps as may be desirable to prevent or limit the occurrence or repetition of accidents involving machinery.

26. A person who is or has been an inspector is not personally liable for any matter or thing done or omitted in good faith in the exercise or purported exercise of any power or function conferred on or exercisable by him by or under this Act.

Protection
of inspector.

27. (1) Every inspector may—

General
powers and
duties of
inspectors.

- (a) at all reasonable hours by day or by night, enter any place or premises where there is machinery, or where he has cause to believe that there is machinery or that machinery is to be installed or used, and remain thereon or therein, and may inspect that place or those premises, any machinery there found and any equipment or thing connected or used with any such machinery, and may make such examination and inquiry as he thinks necessary to ascertain whether or not the provisions of this Act apply or have been or are being complied with;
- (b) in making any such inspection, call to his aid any member of the Police Force of the State to assist him in the execution of his duty or where he has reasonable cause to apprehend any obstruction in the execution of his duty;
- (c) require the production of any register, record, notice or other document that any person is by this Act required to keep or exhibit in respect of machinery to which this Act applies, and copy any such document or make extracts from it;
- (d) take with him into any place or premises referred to in paragraph (a) of this subsection, any person he may require as a professional or expert adviser or interpreter and whose assistance he considers necessary in the performance of his duties under this Act;

"This Act"
includes
regulations.
See s. 4 Act
No. 30 of
1918.

- (e) at all reasonable hours by day or by night, question, either alone or in the presence of some other person, any person as to compliance with this Act in any particular;
- (f) subject to the provisions of section 78, institute proceedings for offences against this Act; and
- (g) exercise such other powers and authorities as may be prescribed.

(2) A person is not required, under the authority of this section, to answer any question or give any information tending to incriminate himself, and before a person is questioned by an inspector pursuant to this section, the inspector shall advise the person accordingly.

(3) A question, inquiry or requisition that is put or made on behalf of an inspector by a person acting as interpreter for the inspector shall be deemed to have been put or made by the inspector, and the answer thereto made to the interpreter shall be deemed to have been made to the inspector.

Inspection
procedure.

28. (1) For the purposes of any inspection, an inspector may make, or direct the owner to make or cause to be made, any examination or test that he considers necessary in the interests of safety, and may give directions to facilitate the carrying out of any such examination or test.

Owner to
assist
inspector.

(2) The owner of any place or premises whereon or wherein there is machinery shall furnish the means required for, and shall comply with any directions as to the making of, any entry, inspection, examination, test, inquiry, or otherwise for the exercise by an inspector of his powers under this Act.

(3) A person who fails to comply with the provisions of subsection (2) of this section or who obstructs a person acting as professional or expert adviser to, or interpreter for, an inspector shall be

deemed to have obstructed the inspector in the execution of his duties under section 29 and is liable to be punished under that section accordingly.

29. (1) Subject to subsection (2) of section 27, a person shall not—

Offences as to inspections.

- (a) assault, resist or impede, delay or in any way obstruct an inspector in the exercise of his powers or in the discharge of his duties under this Act;
- (b) fail, without lawful excuse, to answer any question put to him in pursuance of this Act by an inspector or a person acting as professional or expert adviser to, or interpreter for, an inspector, or give a false or misleading answer to any such question;
- (c) fail to comply in any respect with the lawful written request, requirement or order of an inspector;
- (d) when required by or under this Act to furnish any assistance or to furnish any information to an inspector, fail without lawful excuse to furnish that assistance or information, or furnish false or misleading information;
- (e) fail to produce any register record, notice or other document which, pursuant to paragraph (c) of subsection (1) of section 27, he is required by an inspector to produce, or fail to allow the inspector, upon his so producing the same, to make copies of or take extracts from it or any part thereof or of any entries therein;
- (f) directly or indirectly prevent any person from appearing before or being questioned by an inspector; or
- (g) use any threat or any abusive or insulting language to any inspector or a person acting as professional or expert adviser, or interpreter for an inspector, or to any

workman with respect to any inspection, examination or interrogation made under this Act.

(2) Any statement made pursuant to any requirement made pursuant to this Act, shall not, if the person making the statement objected, at the time of making it, to doing so on the ground that it might tend to incriminate him, be admissible in evidence in any prosecution against the person for any offence not being the offence of contravening the provisions of this section.

Power to
give direc-
tions.

30. (1) Where an inspector is of the opinion that any machinery, or any part of any machinery, or any fitting or attachment to any machinery, is defective or dangerous or in the interests of safety requires to be repaired or renewed, or that any other thing may affect the safety of persons or property if the machinery is permitted to continue to be used in the condition it then is, he may direct any person by notice in writing—

- (a) to stop using or operating that machinery; or
- (b) to stop using or operating that machinery until the repairs, renewals, alterations or modifications specified in the notice have been effected; or
- (c) to stop using or operating that machinery except in accordance with the limitations, restrictions or conditions specified in the notice.

(2) A direction given under subsection (1) of this section may be expressed to take effect immediately or from a date to be specified in the notice.

(3) A person to whom a notice containing directions is given under subsection (1) of this section shall take all reasonable steps to bring the substantive requirements of those directions to the knowledge of the persons affected.

31. Where an inspector has issued any order or given any direction or notice or made any request under this Act, he or any other inspector may, at any time, by direction of the Chief Inspector, withdraw or revoke or from time to time vary the order, direction, notice or request or take such further action with respect thereto as may be necessary to give effect thereto.

Power to vary etc. order, direction, etc. of inspector.

32. (1) Where the Chief Inspector considers it necessary in the interests of safety he may amend, add to or vary any limitation, restriction or condition that is applicable to an entry in the Register or to a certificate of inspection, and may suspend or cancel any entry or any certificate if a direction given under section 30 or section 53 has not been complied with within the time specified.

Variation, cancellation and suspension of registration or certification.

(2) If so requested, the Chief Inspector shall furnish in writing to the owner of the machinery to which the entry or certificate relates a statement of his reasons for any action taken by him under subsection (1) of this section.

33. A person who discloses any information that has been furnished to him or obtained by him under this Act, or in connection with the execution of this Act, commits an offence unless the disclosure is made—

Secrecy.

- (a) with the consent of the person carrying on or operating any business to which that information relates; or
- (b) for the purpose of giving effect to the objects of this Act and in the performance of a duty under this Act.

Penalty: Two thousand dollars, or imprisonment for twelve months, or both such fine and imprisonment.

34. (1) Inspection documents, certificates and other records held by the Chief Inspector shall be open to inspection, without charge, by the owner of

Availability of records.

the machinery to which those records relate or any person authorized in writing by the owner, subject to subsection (2) of this section, but shall not be open to inspection by any other person.

(2) The records referred to in subsection (1) of this section shall not be made available for inspection by any person, and no copies thereof shall be taken—

- (a) where they relate to an accident involving machinery; or
- (b) where they contain or refer to design information submitted by a person other than the owner.

(3) Where a person is permitted by this section to inspect any records he may, on payment of the prescribed fee and subject to any conditions that may be required of him, be permitted to take a copy of those records.

PART V.—CERTIFICATES OF COMPETENCY.

Application
of this
Part.

35. (1) Subject to subsection (2) of this section, this Part of this Act applies to—

- (a) any locomotive or traction engine;
- (b) any internal combustion engine;
- (c) any winding engine;
- (d) any steam engine;
- (e) any crane or hoist;
- (f) any steam boiler;
- (g) any hot water boiler; and
- (h) such other machinery as is prescribed.

(2) This Part of this Act does not apply to—

- (a) any boiler with a heating surface of not more than 10 square metres;
- (b) any steam boiler which has electrical heating elements of not more than 120 kilowatt capacity;

- (c) any steam boiler with a heating surface of more than 10 square metres but not more than 15 square metres where the automatic controls and fail safe devices are of the prescribed kind and are serviced and maintained in the prescribed manner;
- (d) any non-steaming hot water boiler of a prescribed kind or class where the automatic controls and fail safe devices are of the prescribed kind and are serviced and maintained in the prescribed manner;
- (e) any internal combustion engine having a cylinder area or combined cylinder area of not more than 1 290 square centimetres;
- (f) any internal combustion engine having a cylinder area or combined cylinder area of more than 1 290 square centimetres where—
 - (i) in the opinion of the Chief Inspector the engine is in a location and is used for purposes where there is little likelihood of damage resulting from any malfunction or failure; and
 - (ii) automatic controls and fail safe devices of the prescribed kind are fitted and are serviced and maintained in the prescribed manner; and
 - (iii) the engine is used or operated under and in accordance with the written permission of the Chief Inspector;
- (g) any machinery used exclusively for domestic purposes;
- (h) any crane driven by hand or animal power;
- (i) any self contained hoist driven by air or electricity or hand power or any cantilever type builder's hoist of not more than 11 metres in working height;

- (j) any hoist, winding engine, power shovel excavator equipped with a jib or boom, or any underground locomotive, the authorization for the operation of which is a matter for the Minister responsible for mining matters;
- (k) any locomotive used solely for amusement purposes, other than a locomotive driven by steam;
- (l) any miniature locomotive; or
- (m) any machinery or class of machinery of a kind specified for the purposes of this Part of this Act in an order for exemption made under subsection (3) of section 7.

Machinery to be in charge of authorized persons.

36. At all times when that machinery is under working conditions or in use, any machinery to which this Part of this Act applies shall be in the charge of a person who holds a certificate of competency, permit or licence, authorizing him to use, operate, or be in charge of that machinery.

Only holders of certificates of competency to do certain acts.

37. A person who—

- (a) uses, operates, or acts as the driver or operator in charge of any machinery to which this Part of this Act applies; or
- (b) otherwise than in a prescribed capacity, performs any operation or carries out any work of a kind that is prescribed on or in relation to any machinery to which this Part of this Act applies,

commits an offence unless he holds, or is deemed to hold, a certificate of competency, permit or licence, granted under this Act authorizing him so to do.

Machinery not to be left unattended by a competent person.

38. A person who is using, operating or in charge of any machinery to which this Part of this Act applies shall not when that machinery is under working conditions or in use absent himself from that machinery unless relieved by a competent person who is authorized to do so by or under this Act.

39. (1) The Chief Inspector shall have the power to grant any of the following certificates of competency—

Categories
of certifi-
cate.

- (a) Winding Engine Driver's Certificate;
- (b) First Class Engine Driver's Certificate;
- (c) Second Class Engine Driver's Certificate;
- (d) Steam Locomotive and Traction Engine Driver's Certificate;
- (e) "A" or "B" Class Locomotive Driver's Certificate;
- (f) Crane Driver's Certificate;
- (g) Hoist Driver's Certificate;
- (h) Internal Combustion Engine Driver's Certificate;
- (i) Boiler Attendant's Certificate;
- (j) Welding Supervisor's Certificate;
- (k) Welder's Certificate;
- (l) a Restricted Certificate of Competency in any of the categories referred to in paragraph (a) to paragraph (k) of this subsection; and
- (m) any other prescribed certificate.

(2) The Chief Inspector shall have power to restrict or to extend the authorization conferred by a certificate by endorsement on that certificate, and may in the same manner impose any limitation or condition on the exercise of the authority conferred by a certificate.

(3) A certificate of competency of a kind referred to in subsection (1) of this section authorizes the holder to drive, use, operate, or be in charge of, or to perform any operation or carry out any work on or in relation to, any machinery prescribed in respect to or specified in that certificate subject to such limitations, restrictions, or conditions as are endorsed on that certificate.

(4) The extent of the authority conferred by any certificate and the privileges exercisable by the holder shall be as prescribed.

Conditions
for the
grant of a
certificate
of compet-
ency.

40. (1) Subject to this Act, all certificates of competency shall be granted by the Chief Inspector after examination conducted by or on behalf of the Chief Inspector.

(2) Examinations shall be held at the times and places determined by the Chief Inspector and shall relate to such matters as are prescribed.

(3) On an applicant for a certificate of competency—

- (a) passing the prescribed examination, or otherwise satisfying the Chief Inspector that he possesses the prescribed qualifications and experience;
- (b) satisfying the Chief Inspector of his fitness in all other respects; and
- (c) paying the prescribed fee,

the Chief Inspector may grant to him a certificate of competency of the appropriate kind and class.

(4) The Chief Inspector may in his discretion refuse to grant a certificate of competency.

(5) Every applicant for a certificate of competency—

- (a) where so required by the Chief Inspector, must produce a certificate in the prescribed form from a duly qualified medical practitioner;
- (b) must satisfy the Chief Inspector that his knowledge of the English language is sufficient to enable him to perform the duties required of a holder of that certificate; and
- (c) must produce to the Chief Inspector satisfactory evidence that he has had the experience and fulfils the conditions prescribed as required to render a person eligible to apply for that certificate.

41. On payment of the prescribed fee, and on proof that the applicant is resident in the State of Western Australia, and a person of good repute, and on production of satisfactory testimonials, and a certificate granted after examination by the Board of Trade of the United Kingdom of Great Britain and Ireland, or by any Board in Her Majesty's Dominions having authority from the said Board of Trade to grant certificates, the Chief Inspector may grant, without examination, a certificate of competency as follows—

Recognition
of Marine
Engineers'
certificates.

- (a) to the holder of a first-class or second-class marine engineer's certificate (steam)—a First Class Engine Driver's Certificate;
- (b) to the holder of a first-class or second-class marine engineer's certificate (motor)—an Internal Combustion Engine Driver's Certificate; and
- (c) to the holder of a third-class marine engineer's certificate (steam)—a Second Class Engine Driver's Certificate.

42. On payment of the prescribed fee the Chief Inspector may, without examination, grant a certificate of competency to any person who satisfies the Chief Inspector that he is resident in the State of Western Australia, is a person of good repute, and is the holder of a certificate granted by any duly constituted and recognised authority within the Commonwealth, the qualifications for which substantially correspond with the provisions of this Act in relation to the certificate of competency for which he applies.

Reciprocity
of compet-
ency certifi-
cates.

43. (1) A person who, immediately prior to the coming into operation of this Part of this Act, was the holder of a certificate granted or deemed to have been granted under the repealed Acts of a kind specified in the first column of the schedule to this

Transitional
provisions
as to certifi-
cates.

subsection is deemed to have been granted under this Act a certificate of the kind specified opposite thereto in the second column,—

SCHEDULE.

First Column	Second Column
Winding Engine Driver's Certificate.	Winding Engine Driver's Certificate.
First Class Engine Driver's Certificate.	First Class Engine Driver's Certificate.
Second Class Engine Driver's Certificate.	Second Class Engine Driver's Certificate.
Third Class Engine Driver's Certificate.	Second Class Engine Driver's Certificate.
Locomotive and Traction Engine Driver's Certificate.	Steam Locomotive and Traction Engine Driver's Certificate.
"A" or "B" Class Diesel Locomotive Driver's Certificate.	"A" or "B" Class Locomotive Driver's Certificate.
Crane and Hoist Driver's Certificate.	Crane or Hoist Driver's Certificate.
Internal Combustion Engine Driver's Certificate.	Internal Combustion Engine Driver's Certificate.
Boiler Attendant's Certificate.	Boiler Attendant's Certificate.

(2) Where a person immediately prior to the coming into operation of this Part of this Act was the holder of a certificate of service granted under the repealed Acts he is deemed for the purposes of this section to have been the holder of the certificate of competency which under the repealed Acts was the equivalent of that certificate of service.

(3) Where a restriction or endorsement was placed on any certificate granted or deemed to have been granted under the repealed Acts a similar restriction or endorsement applies to any certificate which is deemed to have been granted in relation thereto under the provisions of this section.

(4) Where a person immediately prior to the coming into operation of this Part of this Act was the holder of a transfer certificate granted under the repealed Acts he is deemed to have been issued with a permit or licence by the Chief Inspector pursuant to the provisions of subsection (1) of section 45.

44. (1) In relation to certificates of competency, regulations may be made under this Act for or with respect to—

Regulations
as to certifi-
cates of
competency.

- (a) the form of the certificate;
- (b) the kinds of certificate applicable to specified machinery;
- (c) the classes of certificate of any specified kind;
- (d) the duration, and the manner of renewal, of specified certificates;
- (e) the endorsement, suspension or cancellation of certificates;
- (f) the limitations, restrictions and conditions that may be imposed;
- (g) the forms to be used for the purposes of this Act, and the manner of, and time for, their completion including a requirement that information supplied be verified by statutory declaration;
- (h) the fees that are payable;
- (i) the examinations that may be required in relation to specified kinds or classes of certificate;
- (j) the conduct of examinations by or on behalf of the Chief Inspector;
- (k) the qualifications and the experience that may be required to satisfy the Chief Inspector;

- (1) the practical testing of applicants; and
- (m) any other purpose that the Governor thinks necessary for safeguarding persons and the public interest in relation to machinery safety.

(2) In subsection (1) of this section "specified" means specified in the regulations.

Power to
license.

45. (1) The Chief Inspector has power, where the doing of any act would otherwise constitute a contravention of the provisions of section 37, to issue a permit or licence, which may be made subject to such limitations, restrictions or conditions as he may require and endorse upon it, authorizing the doing of that act in any case where for reasons of training, practice, unavoidable circumstances or public interest it appears to him to be necessary or desirable.

(2) Where any person being the holder of a certificate of competency granted within the Commonwealth, or of such other qualification as is in the opinion of the Chief Inspector satisfactory evidence of competence, makes application to the Chief Inspector for a certificate in respect of the same or a similar subject matter the Chief Inspector may issue to him a temporary permit.

(3) A permit issued under subsection (2) of this section—

- (a) shall be returned to the Chief Inspector at any time the Chief Inspector, by notice in writing, so requires;
- (b) authorizes that person to do any act that would otherwise constitute a contravention of the provisions of section 37, for the period therein specified or until its return is sooner required by the Chief Inspector under this subsection; and
- (c) is subject to the limitations, restrictions or conditions endorsed thereon.

46. A person who, whether for himself or on behalf of another person,—

Offences as to certificates of competency.

- (a) makes, or causes to be made, any falsification in any matter relating to an application for, or the variation, grant or use of a certificate of competency, permit or licence;
- (b) knowingly presents, or causes to be presented to the Chief Inspector any forged, false or fraudulent document, representation or other purported evidence as to his qualifications or experience;
- (c) personates, or wrongfully represents himself as being, the person referred to in any document presented to the Chief Inspector; or in any certificate, permit or other document granted under this Act;
- (d) makes any false statement upon any inquiry or examination held or conducted under this Act;
- (e) makes a false statement in any declaration required under this Act; or
- (f) gives a false testimonial to any person for the purposes of, or in relation to, any application made or to be made under this Act,

commits an offence.

47. (1) Where it appears to the Chief Inspector that a person who is, or is deemed to be, the holder of a certificate of competency under this Act—

Disciplinary powers.

- (a) obtained that status by fraud or misrepresentation;
- (b) as the result of a finding of any other authority exercising outside the State powers similar to those conferred on the Chief Inspector by this Act, has been at

any time, and in the opinion of the Chief Inspector should continue to be, disqualified from carrying out the duties required of the holder of that kind of certificate;

- (c) is guilty of an offence against this Act;
- (d) is guilty of misconduct in relation to the requirements of machinery safety, by reason of negligence, incompetence or otherwise;
- (e) is addicted to alcohol or any deleterious drug or suffers from any mental or physical disorder to a degree that renders him unfit to be trusted to perform his duties as such holder efficiently,

the Chief Inspector may call upon that person to return his certificate to, and appear before, the Chief Inspector to show cause why he should not be dealt with in accordance with the provisions of this Act.

(2) Pending the holding of the inquiry the Chief Inspector may suspend any person, either generally or to a specified extent, for a period not exceeding three months, from acting under any authorization or exercising any privilege conferred by a certificate.

Summary
procedure.

48. Where the Chief Inspector considers that the matter does not require that the person required to show cause should be disqualified or suspended, the Chief Inspector, after affording to that person an opportunity of giving an explanation to the Chief Inspector either in person or in writing, may, if that person gives his consent in writing, deal with the matter summarily, without holding an inquiry under the provisions of section 47.

Conduct of
inquiry.

49. (1) Where the Chief Inspector calls for any person to return his certificate and appear before him, the Chief Inspector shall give to that person, and to the secretary of the industrial union of workers to which that person belongs, notice of the

time and place at which the inquiry is to be held and sufficient details of the matters to be inquired into to enable that person to show cause why he should not be dealt with in accordance with the provisions of this Act.

(2) In conducting the inquiry the Chief Inspector is not bound by rules of evidence or legal procedure and may inform himself in any manner he thinks fit but the Chief Inspector shall afford the person who is required to show cause, and the representative of the industrial union of workers to which that person belongs, an opportunity to be heard, either in person or by solicitor or counsel, and to examine witnesses.

(3) The Chief Inspector may by a summons in the prescribed form require the attendance at any inquiry held pursuant to section 47 of the person required to show cause, and may also require the attendance at those proceedings of any other person that the Chief Inspector considers is likely to be able to give evidence or produce documents touching the matter in question, or who the person required to show cause desires to call as a witness.

Attendance
at inquiries,
etc.

(4) The Chief Inspector may administer an oath or affirmation to a person appearing to give evidence before him, whether the witness has been summoned or is voluntarily attending, and the witness may be examined accordingly.

(5) A statement or disclosure made before the Chief Inspector by a witness is not, except in an appeal under this Act or in proceedings for giving false testimony before the Chief Inspector, admissible in evidence against him in any civil or criminal proceedings.

(6) The Chief Inspector may inspect documents or other exhibits before him, may retain them for such reasonable period as appears to him to be necessary, and may make copies of so much of them as is relevant to a matter before him.

(7) A summons issued by the Chief Inspector under subsection (3) of this section—

- (a) may require the production of any document or other thing in the custody or control of the person summoned;
- (b) may be enforced by the Supreme Court or a Judge, on application by the Chief Inspector, in the same manner as a subpoena to the like effect issued by the Supreme Court in a civil action.

(8) A witness before the Chief Inspector has the same protection as a witness in a matter before the Supreme Court.

(9) A person who attends for the purpose of giving evidence before the Chief Inspector is entitled to receive such fees and allowances as the Chief Inspector may allow in accordance with the prescribed scale.

Proceedings
may be
conducted
in camera.

50. (1) The Chief Inspector may, on his own motion or on the application of any person, determine that it is in the public interest that an inquiry, or any part of an inquiry, should be heard in camera and the proceedings shall thereupon be conducted accordingly.

(2) Any question as to whether any proceedings of the inquiry should or should not be heard in camera may be referred to a Judge and shall be heard in Chambers, and the Judge may reverse the decision of the Chief Inspector or may confirm it absolutely or upon conditions which may include conditions intended to protect the business or interest of any person, and may make such further or other order as the Judge thinks fit.

(3) The decision of a Judge on any matter under this section is final.

51. (1) Where it appears to the Chief Inspector, as the result of an inquiry held pursuant to section 47, that the person required to show cause why he should not be dealt with according to the provisions of this Act has failed so to show cause, or if that person fails to appear at the inquiry without reasonable excuse, the Chief Inspector may—

Penalties
and costs.

- (a) disqualify that person and order that the certificate of competency be returned to him for cancellation;
- (b) suspend the operation of a certificate of competency in relation to that person, either generally or to a specified extent, for a period not exceeding twelve months;
- (c) censure him and endorse the certificate accordingly; or
- (d) impose or vary any limitation, restriction or condition and endorse the certificate accordingly.

(2) The Chief Inspector may, in any case, in addition to or in lieu of imposing any one or more of the penalties specified in this section, order any person against whom an order is made to pay such costs and expenses of or incidental to the proceedings as the Chief Inspector thinks fit.

(3) Where any costs or expenses are ordered to be paid by any person under this section the amount ordered to be paid shall be recoverable from him in any court of competent jurisdiction as a debt due to the Minister.

52. (1) Where the operation of a certificate of competency is suspended generally the holder is not authorised to do any act that would constitute a contravention of the provisions of section 37 during the period for which the suspension subsists.

Effect of
suspension.

(2) Where the operation of a certificate of competency is suspended to a specified extent the holder is not authorized to do any act in respect of which the certificate is suspended during the period for which the suspension subsists.

(3) The Chief Inspector may, by notice in writing, revoke an order for suspension, either generally or to a specified extent, and may direct in the notice that the revocation have effect from a date specified in the notice.

PART VI.—APPEALS.

Appeals.

53. (1) The Minister may, for the purposes of hearing appeals under this Act, constitute, from time to time, such Boards of Reference, or, from time to time, appoint an arbitrator, as he considers necessary.

(2) Where a person is aggrieved by any direction given or order made under this Act by an inspector, including an order for the cancellation or suspension of a certificate of competency, he may, within twenty-eight days or where any other time has been prescribed within that prescribed time, after the direction or order has been given, appeal against that direction or order to the Minister.

(3) The operation of any direction given or order made under this Act shall not be suspended pending the determination of an appeal in respect of the matter.

(4) Notice of the appeal, in the prescribed form, shall be given to the Minister and a copy thereof to the Chief Inspector.

(5) The Minister shall refer the appeal—

- (a) in the case of an appeal against an order for the cancellation or suspension of a certificate of competency, to a Board of Reference; and

- (b) in any other case, to a Board of Reference or to an arbitrator appointed under section 54 if the parties to the appeal request the Minister in writing to refer the appeal for hearing to an arbitrator instead of referring it to such a Board.

(6) A Board of Reference or an arbitrator so constituted or appointed shall exercise and discharge the powers, authorities, duties and functions conferred and imposed upon it or him by or under this Act, and in particular—

- (a) shall hear, as soon as practicable, any appeal referred to it or him in accordance with this Act, at such time and place as it or he causes to be notified to the appellant and the inspector who is the respondent in the appeal and such other party, if any, as the Board or the arbitrator thinks fit;
- (b) may, on the hearing of the appeal, by order confirm, vary or set aside the direction or order of the inspector in respect of which the appeal is made and issue such directions as it or he thinks fit;
- (c) shall set forth in writing the reasons for its or his decision made on the appeal and forward a copy thereof to each party to the appeal.

(7) An appeal shall lie on a question of law from any decision of a Board of Reference or an arbitrator to the Magistrate of the Local Court at Perth, but in all other respects the decision shall be final and shall be given effect according to its tenor by the parties to the appeal.

(8) The Magistrate of the Local Court at Perth—

- (a) may determine the appeal on the record of the appeal heard by the Board of Reference or arbitrator, as the case may be, or on hearing evidence and submissions anew, or partly on each as he thinks fit;

- (b) may confirm, vary or set aside the decision appealed against;
- (c) may make such order as to costs of and incidental to the appeal as he considers just,

and the decision of the Magistrate shall be final and shall be given effect according to its tenor.

(9) Where any costs or expenses arising out of an appeal under this section are ordered to be paid by any person the amount so ordered to be paid shall be recoverable from him in like manner to that in which a debt adjudged by the Local Court to be payable can be recovered.

Boards of
Reference
and arbit-
rators.

54. (1) A Board of Reference shall consist of three persons appointed by the Minister, of whom—

- (a) one shall be appointed by the Minister to be the Chairman of that Board of Reference;
- (b) one shall be a person nominated in writing by the Western Australian Employers' Federation (Inc.) to represent the interests of owners and employers in the matter to which the appeal relates; and
- (c) one shall be a person nominated in writing by the Trades and Labor Council of Western Australia to represent the interests of employees in the matter to which the appeal relates.

(2) A Board of reference shall be constituted in relation to each appeal.

(3) Two members of a Board of Reference form a quorum and the decision of any two members of the Board is the decision of the Board.

(4) A person appointed an arbitrator under section 53 to hear an appeal shall be a person who is technically qualified in relation to the matter the subject of the direction or order appealed against.

(5) For the purpose of an appeal under section 53 a Board of Reference or an arbitrator constituted or appointed by the Minister shall have the like powers to require the attendance of persons or the production of documents or other things, to administer oaths and affirmations, to examine persons and to inspect and retain exhibits, as are conferred on the Chief Inspector by section 49, and the provisions of that section generally apply to the hearing by a Board of Reference or an arbitrator of an appeal as they apply to an inquiry conducted by the Chief Inspector.

(6) The members of a Board of Reference or an arbitrator constituted or appointed under this section shall be paid, out of funds to be provided by the Department of Labour and Industry for the purpose, such fees or remuneration and such travelling and out of pocket expenses as the Minister, from time to time approves in writing.

55. Where a person aggrieved by a direction given under section 30 appeals to the Minister under section 53 and on the determination of the appeal the Board of reference or the arbitrator or the Magistrate of the Local Court at Perth gives a direction in relation to the use or operation of any machinery, any person who contravenes, or employs, permits or suffers another person to contravene, the provisions of the direction given on the appeal by using or operating machinery contrary thereto commits an offence and is liable to a fine of two thousand dollars, and if the offence is a continuing one, to a further fine of one hundred dollars for every day on which the offence has continued.

Contra-
vention of dir-
ection fol-
lowing
appeal.

PART VII.—SAFETY PROVISIONS.

Duty of
owner.

56. (1) In relation to any machinery to which this Act applies it is the duty of the owner to ensure that—

- (a) the machinery, and every part of the machinery including all fittings and attachments, is soundly constructed of material suitable for the purpose, and is safely installed;
- (b) the construction and installation is supervised by competent persons, and is carried out in accordance with such requirements as are prescribed;
- (c) the machinery in use or capable of being used is maintained in a safe and serviceable condition;
- (d) all working places are maintained in a safe and orderly condition; and
- (e) the provisions of this Act are observed.

(2) A person who contravenes or fails to comply with the provisions of subsection (1) of this section commits an offence.

Dealing with
unsafe ma-
chinery.
"This Act"
includes
regulations.
See s. 4 Act
No. 30 of
1918.

57. (1) A person who, whether as agent or otherwise, sells, leases, hires or otherwise deals in machinery that is capable of being used and that does not comply with the provisions of this Act commits an offence.

(2) A person who manufactures, installs or repairs machinery in a manner that does not comply with the provisions of this Act commits an offence.

(3) For the purpose of this section a person shall be taken to deal in machinery if he, for or in the expectation of any remuneration or reward, parts with, transfers or confers a right to the use of that machinery.

58. (1) A person who—

- (a) constructs or manufactures any boiler, pressure vessel, crane, lift, escalator, hoist or winding engine; or
- (b) installs, erects, re-erects, sets up, or sets or places in position any crane, lift, escalator, hoist, or winding engine,

Prior approval to construction or alteration of machinery.

otherwise than under and in accordance with the prior written approval of the Chief Inspector commits an offence.

(2) The provisions of paragraph (b) of subsection (1) of this section do not apply to—

- (a) a hoist, a power shovel, or an excavator equipped with a jib or boom, when used in a mine; or
- (b) machinery that is mobile.

(3) A person who effects any repairs or modifications to, or in any way alters, the main structure, safety devices or other safeguards of, or in relation to, any boiler, pressure vessel, crane, lift, escalator, hoist, or winding engine, otherwise than under and in accordance with the prior written approval of the Chief Inspector commits an offence.

(4) A person who desires to obtain written approval for the purposes of this section shall submit to the Chief Inspector such plans, specifications, drawings, design calculations and other information as are prescribed in the manner prescribed.

(5) Approval for the purposes of this section may be made subject to any limitation, restriction or condition which the Chief Inspector considers necessary and specifies by notice in writing given to the applicant.

Guarding of
machinery.

59. (1) Every dangerous part of any machinery shall be securely fenced or guarded unless it is in such a position or of such a construction as to be as safe as it would be if securely guarded.

(2) Where, by reason of the nature of the operation being carried out, the safety of a dangerous part of any machinery cannot be secured by a fixed guard the requirement of subsection (1) of this section is deemed to have been complied with if a fail safe or other device is provided which automatically prevents any person coming into contact with the dangerous part of the machinery.

(3) Any part of any material or thing being worked on by machinery which projects beyond any part of that machinery shall be securely fenced or guarded unless it is in such a position as to be as safe as it would be if securely guarded.

Construc-
tion and
maintenance
of safe-
guards.
"This Act"
includes
regulations.
See s. 4 of
Act No. 30 of
1918.

60. All fences, guards, safety devices or other safeguards required under the provisions of this Act shall be of substantial construction, and constantly maintained and kept in position while the parts or machinery to be safeguarded are in motion or use except when necessarily removed for examination, lubrication or adjustment purposes.

Unfenced
machinery.

61. In determining whether any part of any machinery is in such a position or of such a construction as to be as safe as it would be if securely guarded—

- (a) no account shall be taken of any person carrying out, while the part of the machinery is in motion, an examination thereof or any lubrication or adjustment shown by the examination to be immediately necessary, if the examination, lubrication or adjustment can only be carried out while the part of the machinery is in motion;

- (b) in the case of any part of transmission machinery used in a prescribed process, where owing to the continuous nature of the process the stopping of that part would seriously interfere with the carrying on of the process, no account shall be taken of any person carrying out any lubrication or any maintenance or replacement procedures,

if the persons involved, the circumstances prevailing, and the methods used have been approved by the Chief Inspector in accordance with the regulations prescribed for the purposes of this section, and all conditions specified therein are complied with.

62. A person who knows of any defect, malfunction or other thing likely to render any machinery dangerous to persons or property and fails to report the matter forthwith to the owner, manager, engineer, supervisor or other person in immediate authority over him, commits an offence.

Reporting
of unsafe
machinery.

63. (1) A person who operates, uses, or acts as the driver or operator in charge of any machinery without exercising ordinary and reasonable precaution to ascertain that the machinery is not unsafe commits an offence.

Use of
unsafe
machinery.

(2) A person who operates, uses or acts as the driver or operator in charge of any machinery knowing that any fence, guard or safety device relating to the machinery is inoperative, defective, or likely to render the machinery dangerous to persons or property, commits an offence unless he is acting under and in accordance with the express authority of the Chief Inspector.

64. A person who wilfully and without proper cause or lawful authority interferes with any safety device in relation to machinery, or who takes any

Wilful
interference.

action likely to render machinery dangerous to persons or property or to damage any machinery, commits an offence.

Penalty: One thousand dollars, or imprisonment for twelve months, or both such fine and imprisonment.

Construction sites.

65. (1) A person who uses or erects—

- (a) any crane, other than a mobile crane;
- (b) any builder's hoist or power driven hoist;
- (c) any other machinery prescribed for the purposes of this section,

on a building construction or engineering construction site, without having given not less than three days' prior notice in writing to the Chief Inspector, commits an offence.

Act No. 13 of 1972.

(2) The requirement of subsection (1) of this section is in addition to and not in derogation of the provisions of the Construction Safety Act, 1972.

Welding to be carried out by competent persons.

66. (1) A person who carries out any welding operation on machinery that is prescribed for the purposes of this section commits an offence unless—

- (a) he holds, or is deemed to hold, a certificate of competency, permit or licence, granted under this Act authorizing him so to do; or
- (b) the welding operation is carried out under the personal supervision of a person so authorized.

(2) For the purposes of this section, the definition of what constitutes a welding operation may be prescribed from time to time.

Special safety regulations.

67. (1) Where the Minister is satisfied that any machinery or process involving machinery is of such a nature as to cause special risk of serious bodily

injury to any person, the Governor may make such special regulations as appear to the Minister to be reasonably practicable and to meet the case.

(2) Regulations made under this section may, amongst other things—

- (a) prohibit the employment of, or modify or limit the hours of employment of, persons or any class of persons in connection with any such machinery or process;
- (b) prohibit, limit, or control the use of any such machinery or process;
- (c) modify or extend with respect to such machinery or process any provisions of this Act imposing requirements as to safety; and
- (d) require an owner to make reasonable provision by arrangements for special supervision in regard to safety, investigation of the circumstances and causes of accidents, and otherwise as may be specified.

68. (1) Every employer shall provide or cause to be provided for each workman engaged in any capacity on machinery that is prescribed for the purposes of this section the protective equipment prescribed, subject to the the conditions prescribed.

Protective
equipment.

(2) A workman shall not fail to wear or use protective equipment when required to do so by or under this Act.

"This Act"
includes
regulations.
See s. 4 of
Act No. 30 of
1918.

(3) A workman shall not—

- (a) without the permission of his employer, remove from any place or premises any safety equipment provided in accordance with this Act;
- (b) fail to carry out protective or safety measures required of him by this Act or by an inspector pursuant to this Act; or

- (c) act in such a way on or in any place or premises as to—
- (i) render ineffective any safety or protective measures provided by his employer in accordance with this Act; or
 - (ii) endanger his own safety or that of another person.

Penalty: One hundred dollars.

PART VIII.—ACCIDENTS.

Accidents to
persons to be
reported.

69. (1) Where an accident occurs arising out of or in connection with the installation, working or motion of machinery of any kind whatever and the accident causes loss of life or serious bodily injury to any person, the owner of that machinery shall give notice forthwith to the Chief Inspector by the fastest practicable method of communication specifying—

- (a) the cause of the accident so far as it is known;
- (b) the precise location where it occurred; and
- (c) the name of every person killed or seriously injured in the accident.

(2) Where an accident occurs arising out of or in connection with the installation, working or motion of machinery causing injury to a person which is not serious bodily injury but which is likely to incapacitate him from working for more than one day, the owner shall give notice of the accident to the Chief Inspector as soon thereafter as it is reasonably practicable to do so and in any event within a period of thirty days.

(3) Where an accident is notified under the provisions of subsection (2) of this section and after notification results in death or serious bodily injury, notice in writing of the changed circumstances shall be given as soon as they come to the knowledge of

any person who would have been liable to give notice under subsection (1) of this section had the extent of the injury then been realised.

(4) Where an accident involving the loss of life of any person is notified to the Chief Inspector he shall, if he has reasonable cause to believe that that person was a member of an industrial union, thereupon notify the secretary of that industrial union of the occurrence of the accident.

70. (1) Where an accident occurs involving the breakage, distortion or damage of— Accidents to machinery.

- (a) any load bearing part of any machinery to which Part V of this Act applies;
- (b) any boiler or pressure vessel;
- (c) any crane, hoist, lift or escalator; or
- (d) any other prescribed machinery,

the owner shall give notice specifying the particulars of the occurrence to the Chief Inspector as soon thereafter as it is reasonably practicable to do so.

(2) The Chief Inspector may, in writing, at any time after the receipt of a notice given under subsection (1) of this section, require the owner to furnish him with additional information.

71. Where the Minister considers that, by reason of the risk of serious bodily injury to persons employed, it is expedient that notice should be given to the Chief Inspector in every case of any special class of accident to machinery or other occurrence on or in any place or premises, the Governor may by regulations extend the provisions of section 69 or section 70 of this Act to any such class of accident or occurrence, and may by those regulations vary the time within which that notice is to be given. Power to extend requirement as to notice.

72. Where an accident occurs involving loss of life or serious bodily injury to any person, a person who moves, puts in motion, or in any way interferes Persons not to interfere.

with the machinery concerned or any thing affected or damaged as a result of the accident, commits an offence unless his action is necessary—

- (a) for the purpose of saving life or relieving suffering;
- (b) in order to prevent damage to property; or
- (c) to stop the machinery,

or unless he has first obtained the permission of an inspector, or, where no inspector is reasonably available, a member of the Police Force.

Penalty: Two hundred dollars.

Inspector to report.

73. An inspector in any case may, and shall—

- (a) upon receipt of a notice of an accident involving loss of life or serious bodily injury, forthwith; and
- (b) in relation to any accident not involving loss of life or serious bodily injury, upon being directed,

investigate the circumstances of the occurrence of an accident and, where practicable, determine the cause and report thereon to the Chief Inspector.

Inquiry may be ordered.

74. (1) Where an accident involving loss of life or serious bodily injury has occurred, the Minister may direct an inquiry to be held before a Stipendiary Magistrate and two other persons appointed by the Minister.

(2) The Stipendiary Magistrate and other persons so appointed may hold the inquiry at such times and places as the Magistrate appoints, and shall report in writing to the Minister on the cause of the accident as soon as practicable after concluding the inquiry.

(3) With respect to the summoning and attendance of witnesses and the production of documents at or upon the inquiry, and the

examination of those witnesses upon oath, the Stipendiary Magistrate has all the powers that he would have or might exercise in any case within his jurisdiction under the Justices Act, 1902.

(4) Any inspector may attend an inquiry held under this section or any coroner's inquiry held in connection with any accident referred to in subsection (1) of this section and may examine any witness at the inquiry.

(5) Every witness summoned and attending at any inquiry held under this section is entitled to such fees and expenses as the Stipendiary Magistrate and other two persons holding the inquiry may order and they shall be paid by the person against whom the order is made.

(6) Any costs payable pursuant to an order made under this section may be recovered as a debt due, in any court of competent jurisdiction.

PART IX.—RURAL MACHINERY.

75. (1) The following provisions of this Act do not apply to rural machinery, that is to say—

Application
of this Act
to rural
industry.

- (a) PART III.—REGISTRATION AND CERTIFICATION;
- (b) PART V.—CERTIFICATES OF COMPETENCY;
and
- (c) in relation to PART VIII.—ACCIDENTS,—
 - (i) subsection (2) and subsection (3) of section 69;
 - (ii) section 70; and
 - (iii) section 73.

(2) Unless the context or a specific provision otherwise requires, the provisions of this Act do not apply to rural machinery of the following kinds, that is to say—

- (a) rural machinery driven by treadle, wind or animal power;

- (b) rural machinery driven by hand power;
- (c) rural machinery driven from mechanical power derived from a wheel which revolves in contact with the ground;
- (d) any motor vehicle;
- (e) machinery used exclusively for domestic purposes;
- (f) machinery driven by an electric motor of which the power is less than 0.75 kilowatt; and
- (g) such other machinery as is prescribed.

(3) Except as provided in, or in regulations made under, this Part of this Act, the provisions of this Act apply to all rural machinery of whatever kind when that machinery is used or operated by any rural employee and apply to a wheeled tractor when used or operated in a rural industry by any person whatsoever.

(4) Notwithstanding the coming into operation of this Act or any provision of this Act generally, the Act or that provision shall not apply in relation to the matters specified in the first column of the schedule to this subsection until after the expiry of the period specified in the second column of that schedule following upon the date of the coming into operation of this Part of this Act.

SCHEDULE.

The provision of general guarding of rural machinery	
(a) new rural machinery sold on or after the coming into operation of this Part of this Act	Six months
(b) any other rural machinery	Eight years
The guarding of power take offs on tractors	Six months
The provision of a protective cab or frame over the driver's seat on a tractor	
(a) a new tractor sold on or after the coming into operation of this Part of this Act	Twelve months
(b) any other tractor	Ten years

(5) Any provision of this Act that may require the fitting of a protective cab or frame upon a wheeled tractor shall not apply to—

- (a) a tractor weighing less than 560 kilograms or more than 3 855 kilograms, the mass of the tractor being deemed to be the lowest mass in which the tractor in any form is normally available for retail sale when new and without water, fuel and lubricating oil; or
- (b) a tractor used in, or being driven to or from, an operation—
 - (i) in an orchard; or
 - (ii) inside or in close proximity to a building,

where it would not be reasonably practicable for the operation to be carried out by means of the tractor if it were fitted with a protective cab or frame built in accordance with the provisions of this Act.

76. Upon receipt of a notification of an accident involving rural machinery the Chief Inspector may require an inspector to investigate the circumstances of the occurrence of the accident and, where practicable, to determine the cause and report thereon.

Accidents involving rural machinery.

77. (1) The Governor may make regulations, not inconsistent with this Act, prescribing all matters related to rural machinery necessary or convenient for securing the health, safety and welfare of persons engaged in rural industry for hire or reward whether as employees or otherwise.

Regulations as to rural industry.

(2) Without limiting the general power conferred, by subsection (1) of this section, the Governor may, in relation to rural industries, make regulations—

- (a) requiring the provision of protective guarding and frames upon tractors;
- (b) providing for the safety of persons using or riding upon tractors;

- (c) requiring the guarding of machine components including any shafting, pulley, flywheels, gearing, sprocket, belt, chain, fan or auger on rural machinery; and
- (d) regarding the obligations of users, sellers or lessors of rural machinery.

(3) The provisions of subsections (2), (4) and (5) of section 88 shall apply to regulations made under the authority of this section.

PART X.—ENFORCEMENT AND REGULATIONS.

Power to prosecute with consent of Under Secretary.

78. No prosecution for an offence against this Act shall be instituted without the consent in writing of the Under Secretary.

Proceedings for offences to be heard by Stipendiary Magistrate.

79. (1) All proceedings in respect of offences against this Act shall be heard by a Court of Petty Sessions constituted by a Stipendiary Magistrate sitting alone.

(2) Subject to subsection (1) of this section, the provisions of the Justices Act, 1902, shall apply to such proceedings.

Offences.

80. (1) A person who contravenes any provision of this Act or does not do that which, by or under this Act, he is required or directed to do, commits an offence against this Act.

(2) A person who, when required to do so under this Act, fails to furnish to the Chief Inspector within a reasonable time thereafter any additional information which the Chief Inspector has asked for in relation to any matter commits an offence.

(3) Where an offence is committed by a person by reason of his failure to comply with any provision of this Act by or under which he is required or directed to do anything within a particular period, that offence shall, for the purposes of section 81, be deemed to continue so long as the thing so required or directed to be done by him remains undone, notwithstanding that the particular period has elapsed.

81. A person who commits an offence against this Act for which no penalty is provided elsewhere than in this section is liable to a fine of four hundred dollars, and if the offence is a continuing one, to a further fine of twenty dollars for every day on which the offence has continued.

General
penalty.

82. Where a body corporate is convicted of an offence against this Act by reason of any contravention by the body corporate of, or failure by the body corporate to comply with, any of the provisions of this Act, every director or member of the governing authority of the body corporate who authorized, directed or consented to the contravention or failure shall be deemed, without affecting the conviction against the body corporate, to be guilty of an offence against this Act.

Bodies cor-
porate.

83. Where proceedings are taken against a person for or in respect of a contravention of any provision of this Act it is no defence for that person to prove that he was the agent or employee of any other person or was acting in pursuance of an order or direction given by such other person.

Agent or
employee
liable for
penalty.

84. A person who employs, causes, procures, permits or suffers another person to contravene any provision of this Act commits an offence punishable as in the provision contravened.

Employers
and others
may be
liable.

85. (1) Where a person is charged on complaint with an offence against this Act, he is entitled, upon complaint duly laid by him, to have any other person whom he alleges to be the actual offender brought before the Court of Petty Sessions on the same charge, and to enable both charges to be heard together the hearing of the first complaint may be adjourned for such time as the Court of Petty Sessions thinks reasonable.

Defendant
may have
actual
offender
charged.

(2) In any such case, if the charges are heard together and the offence is proved but the Court of Petty Sessions finds that—

- (a) the offence was committed in fact by that other person, without the knowledge, consent or connivance of the person charged in the first complaint; and
- (b) the person charged in the first complaint has done all that could be expected of him, in the circumstances of the case, to prevent the commission of the offence,

that other person shall be convicted of the offence and the person charged on the first complaint is not guilty of the offence.

(3) If, before the commencement of any proceedings against a person in respect of an offence against this Act, the person authorized to institute the proceedings is satisfied that if any other person were charged with the offence under the foregoing provisions of this section, that other person would be convicted of the offence, the person instituting the proceedings shall proceed against the person whom he believes to be the actual offender without first proceeding against the firstmentioned person.

Facilitation
of proof.
"This Act"
includes
regulations.
See s. 4 Act
No. 30 of
1918.

86. (1) In any prosecution for an offence against this Act—

- (a) it is not necessary to prove the appointment of an inspector or his authority to do any act, to issue any order, to give any direction or notice, or to make any request or take any proceedings, but nothing in this paragraph affects the right of the defendant in any such prosecution to prove the extent of that authority;
- (b) a signature purporting to be that of the Minister, the Under Secretary, the Chief Inspector, the Deputy Chief Inspector or an inspector shall be taken to be the signature of the person whose signature it purports to be until the contrary is proved;

- (c) a statement signed by the Chief Inspector that a certificate, permit or other document of the description mentioned in the statement has or has not been issued pursuant to this Act to a person and, in the case of a certificate, permit or other document that has been so issued, as to the date of issue of, and the particulars contained in, the certificate, permit or other document, is evidence of the matter specified in the statement; and
- (d) the allegation or averment in any complaint that any machinery is machinery to which Part V of this Act applies is evidence of that fact unless the contrary is proved.

(2) Where by any provision of this Act any person who is an owner, occupier, employer or person in charge of machinery is required to give any notice to any person, the burden of proof that the provision has been complied with is on that person.

(3) It is sufficient in any complaint for an offence against this Act, where the defendant is a natural person, to name the defendant by the name by which he is usually known, and where the defendant is a body corporate or a firm, the name by which the body corporate or firm and any member thereof is usually known, and the onus of proof is on the person, body corporate or firm so named to prove that he or it, as the case may be, is not the defendant.

(4) In all courts and before all persons authorized to receive evidence a notification in the *Gazette* of the findings of the Chief Inspector in relation to the exercise of his disciplinary powers and of any order made by the Chief Inspector or the Minister under this Act is evidence of the facts therein stated.

87. (1) Any notice, order or other document required or authorized by or under this Act to be served on, sent or given to, or lodged with a person may be so served, sent, given or lodged—

- (a) by delivering it to that person; or

Provisions
as to giving
of notices.

- (b) by forwarding it to that person at his usual or last known place of abode or business by registered post or by certified mail pursuant to the regulations made under the Post and Telegraph Act 1901 of the Commonwealth Parliament as amended from time to time, or under any Act in substitution therefor as so amended.

(2) In any prosecution for the offence of failing to give a notice required by this Act within the period permitted by this Act, it shall be a defence for any person who would otherwise be liable to the penalty prescribed for that offence to prove that he took all reasonable steps to ensure that the provisions of this Act as to the giving of notice were complied with.

Regulations.

88. (1) The Governor may make regulations in regard to any matter or for any purpose for which regulations are prescribed or contemplated by this Act, and may make all such other regulations as may in his opinion be necessary or expedient for giving effect to the provisions of this Act, and for the due administration thereof.

(2) Any regulations made under this Act may be of general or limited application.

(3) Without limiting the general power conferred by subsection (1) of this section, the Governor may make regulations for or with respect to all or any of the following matters—

- (a) prescribing that fees shall be payable in relation to any application or other matter under this Act and prescribing the method of assessment of such fees, the persons liable, and all other matters necessary or convenient to be prescribed in relation thereto;
- (b) prescribing penalties, not exceeding a fine of four hundred dollars, or if the offence is a continuing offence not exceeding twenty

dollars for every day on which the offence has continued, in respect of a contravention of any of the regulations;

- (c) prescribing qualifications to be held under this Act by any persons doing any work specified therein and defining those persons;
- (d) the application for and the grant, issue, renewal, suspension or cancellation of registration, certificates, permits, licences and authorities under this Act;
- (e) the restrictions, limitations or conditions that may be imposed under this Act;
- (f) the manner in which appeals under this Act shall be brought and the procedure to be followed in the conduct of those appeals;
- (g) the forms to be used and the records to be kept for the purposes of this Act, and the manner of, and time for, their completion including a requirement that information supplied be verified by statutory declaration;
- (h) the definition of terms for the purposes of this Act including the use of engineering and technical expressions;
- (i) prescribing standards and other matters in relation to machinery in the interests of safety;
- (j) regulating the provisions and the contents of plans, specifications, computations, or other data relating to machinery, and the manner in which it is presented;
- (k) regulating any acts, matters or things in relation to the design, manufacture, construction, installation, identification, operation, alteration, or repair of machinery;
- (l) prescribing the qualifications and experience required for appointment as an inspector under this Act;

- (m) the powers and duties of the Boards of Reference;
- (n) any other purpose that the Governor considers necessary for safeguarding persons and in the public interest in relation to machinery; and
- (o) such transitional, incidental and supplementary provisions as the Governor considers necessary or expedient for the purpose of this Act.

(4) (a) The regulations may adopt, either wholly or in part and either specifically or by reference, any of the standards rules, codes or specifications of the bodies known as the Standards Association of Australia, the British Standards Institution or any other like body specified in the regulations.

(b) Where the standards, rules, codes or specifications adopted by the regulations cannot be conformed to with respect to any provision thereof by reason of unavailability of materials or other reason that the Chief Inspector considers valid, the Chief Inspector may approve the use of such materials, gear, fitments or the like in any machinery as he considers may be used therein with safety.

(5) No regulation shall be deemed to be invalid by reason only that it delegates to, or confers on, any person or body a discretionary authority.

S. 4.

SCHEDULE.

Inspection of Machinery Act, 1921.

Inspection of Machinery Act Amendment Act, 1923.

Inspection of Machinery Act Amendment Act, 1924.

Inspection of Machinery Act Amendment Act, 1941.

Inspection of Machinery Act Amendment Act, 1947.

Inspection of Machinery Act Amendment Act, 1950.

Inspection of Machinery Act Amendment Act, 1951.

Inspection of Machinery Act Amendment Act, 1953.

Inspection of Machinery Act Amendment Act, 1954.

1974.]

Machinery Safety.

[No. 74.

Inspection of Machinery Act Amendment Act, 1956.

Inspection of Machinery Act Amendment Act, 1957.

Inspection of Machinery Act Amendment Act, 1958.

Inspection of Machinery Act Amendment Act, 1969.

Inspection of Machinery Act Amendment Act (No. 2), 1969.
