

Western Australia

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

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# Occupational Safety and Health Act 1984

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Western Australia

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

**An Act to promote and improve standards for occupational safety and health, to establish the Commission for Occupational Safety and Health, to provide for a tribunal for the determination of certain matters and claims, to facilitate the coordination of the administration of the laws relating to occupational safety and health and for incidental and other purposes.**

*[Long title amended by No. 30 of 1995 s. 4; No. 74 of 2003 s. 87(2); No. 51 of 2004 s. 62.]*

## **Part I — Preliminary**

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

### **1. Short title**

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

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

### **2. Commencement**

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

### **3. Interpretation**

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

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

**“apprentice”** —

- (a) means an apprentice under the *Industrial Training Act 1975*; or
- (b) if Part 7 of the *Vocational Education and Training Act 1996* comes into operation, means a person who, as an employee, has entered into an apprenticeship within the meaning of that term in section 58 of that Act;

**“Australian Standard”** means a document having that title published by Standards Australia International Limited (ACN 087 326 690);

**“Australian/New Zealand Standard”** means a document having that title published jointly by —

- (a) Standards Australia International Limited (ACN 087 326 690); and
- (b) the Standards Council of New Zealand;

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

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

“**Commission**” means the Commission for Occupational Safety and Health established under this Act;

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

“**Commissioner of Police**” means the person holding the office of Commissioner of Police under the *Police Act 1892*;

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

“**employee**” means —

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

“**employer**” means —

- (a) a person that employs an employee under a contract of employment; and
- (b) in relation to an apprentice or trainee, the person that employs the apprentice or trainee under an apprenticeship or traineeship scheme under the *Industrial Training Act 1975*;

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

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

“**import**” means to bring into the State, whether from outside Australia or otherwise;

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

“**inspector**” means an inspector appointed under section 42, and subject to section 42B(3), includes a restricted inspector appointed under section 42A;

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

**“police officer”** means a person appointed —

- (a) under Part I of the *Police Act 1892* to be a member of the Police Force of Western Australia;
- (b) under Part III of the *Police Act 1892* to be a special constable; or
- (c) under Part IIIA of the *Police Act 1892* to be an aboriginal aide;

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

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

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

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

**“provisional improvement notice”** means a provisional improvement notice issued under Part VI Division 2;

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

**“safety and health committee”** means a safety and health committee established under Part IV Division 2;

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

**“safety and health representative”** means a safety and health representative elected under Part IV Division 1;

**“self-employed person”** means an individual who works for gain or reward otherwise than —

- (a) under a contract of employment; or
- (b) as an apprentice or trainee,

whether or not the individual is an employer;

**“supply”**, in relation to any plant or substance, includes supply and re-supply by way of —

- (a) sale (including by auction), exchange, lease, hire, or hire-purchase, whether as principal or agent;
- (b) the disposal in a manner referred to in paragraph (a) of assets of a business that include any plant or substance; and
- (c) the disposal of all of the shares in a company that owns any plant or substance;

**“trade union”** means —

- (a) an organisation registered under section 53 of the *Industrial Relations Act 1979*; or
- (b) an organisation registered under the *Industrial Relations Act 1988*<sup>2</sup> of the Parliament of the Commonwealth and having employees as its members, or a branch of any such organisation;

**“trainee”** means a person belonging to a class of persons defined by the regulations as trainees for the purposes of this Act;

**s. 3**

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

**“Tribunal”** has the meaning given to that term in section 51G(2);

**“WA Police”** means the Police Force of Western Australia provided for by the *Police Act 1892*;

**“workplace”** means a place, whether or not in an aircraft, ship, vehicle, building, or other structure, where employees or self-employed persons work or are likely to be in the course of their work.

- (2) Anything that, under this Act, is required to be served on, or otherwise done in relation to, an employer in relation to a workplace or a matter related to a workplace, is deemed to have been so served or done if it is served on, or done in relation to, a person at the workplace who has or reasonably appears to have responsibility for the management or control of the workplace.
- (3) For the purposes of sections 18A, 19A(2), 20A(2), 21A(2), 21C(2), 22A(2), 23AA(2), 23B(2) and 23H(2), a contravention causes serious harm to a person if it causes any bodily injury to the person, or causes the person to have a disease, of such a nature as to —
  - (a) endanger, or be likely to endanger, the person’s life; or
  - (b) result, or be likely to result, in permanent injury or harm to the person’s health.
- (4) For the purposes of this Act, a police officer is to be treated as an employee of the Crown.
- (5) Without limiting any other provision of this Act, a police officer is at work during any period of time when the officer is performing a function of a police officer, whether or not the officer is rostered on duty and, in relation to a police officer, the expressions “work” and “at work” are to be construed accordingly.

*[Section 3 amended by No. 43 of 1987 s. 5; No. 30 of 1995 s. 6; No. 79 of 1995 s. 67(5); No. 54 of 2002 s. 4; No. 74 of 2003 s. 87(3); No. 51 of 2004 s. 14, 38, 63, 73 and 104.]*

**3A. Penalty levels defined**

- (1) Where a person is liable to a level one penalty for an offence against this Act the person is liable —
- (a) if the offence was committed by the person as an employee —
    - (i) for a first offence, to a fine of \$5 000; and
    - (ii) for a subsequent offence, to a fine of \$6 250;
  - (b) if paragraph (a) does not apply —
    - (i) in the case of an individual —
      - (I) for a first offence, to a fine of \$25 000; and
      - (II) for a subsequent offence, to a fine of \$31 250;
    - or
    - (ii) in the case of a body corporate —
      - (I) for a first offence, to a fine of \$50 000; and
      - (II) for a subsequent offence, to a fine of \$62 500.
- (2) Where a person is liable to a level 2 penalty for an offence against this Act the person is liable —
- (a) in the case of an individual —
    - (i) for a first offence, to a fine of \$100 000; and
    - (ii) for a subsequent offence, to a fine of \$125 000;
  - or
  - (b) in the case of a body corporate —
    - (i) for a first offence, to a fine of \$200 000; and

**s. 3B**

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- (ii) for a subsequent offence, to a fine of \$250 000.
- (3) Where a person is liable to a level 3 penalty for an offence against this Act the person is liable —
  - (a) in the case of an individual —
    - (i) for a first offence, to a fine of \$200 000; and
    - (ii) for a subsequent offence, to a fine of \$250 000;
  - or
  - (b) in the case of a body corporate —
    - (i) for a first offence, to a fine of \$400 000; and
    - (ii) for a subsequent offence, to a fine of \$500 000.
- (4) Where a person is liable to a level 4 penalty for an offence against this Act the person is liable —
  - (a) in the case of an individual —
    - (i) for a first offence, to a fine of \$250 000 and imprisonment for 2 years; and
    - (ii) for a subsequent offence, to a fine of \$312 500 and imprisonment for 2 years;
  - or
  - (b) in the case of a body corporate —
    - (i) for a first offence, to a fine of \$500 000; and
    - (ii) for a subsequent offence, to a fine of \$625 000.

*[Section 3A inserted by No. 51 of 2004 s. 15.]*

**3B. Meaning of “first offence” and “subsequent offence”**

- (1) In this section —

**“relevant day”** means the day on which section 15 of the *Occupational Safety and Health Legislation Amendment and Repeal Act 2004*<sup>1</sup> comes into operation.
- (2) For the purposes of this Act —



- (a) an offence is a first offence committed by a person if, at the time when the offence is committed, the person has not previously been convicted of any offence against this Act committed on or after the relevant day; and
- (b) an offence is a subsequent offence committed by a person if, at the time when the offence is committed, the person has previously been convicted of one or more offences against this Act committed on or after the relevant day.

[Section 3B inserted by No. 51 of 2004 s. 15.]

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

- (1) This Act binds the Crown in right of the State and also, so far as the legislative power of the State extends, in all its other capacities.
  - (1a) The functions that the Crown has under this Act because a police officer is to be treated as an employee of the Crown are, so far as they concern a police officer, to be performed by the Commissioner of Police.
  - (1b) This Act has effect subject to any instrument for the time being in force under section 6A of the *Mines Safety and Inspection Act 1994*.
- (2) Subject to this section and except as may be otherwise expressly provided by Parliament, this Act does not apply to or in relation to any workplace that is, or at which work is carried out on, a mine, petroleum well or petroleum pipeline to which the *Mining Act 1978*, the *Mines Safety and Inspection Act 1994*, the *Petroleum Act 1967*, the *Petroleum (Submerged Lands) Act 1982* or the *Petroleum Pipelines Act 1969*, applies.
  - (2a) Subsection (2) does not prevent a provision of Part II from applying in relation to a workplace that is, or at which work is carried out on, a mine to which the *Mining Act 1978*, or the *Mines Safety and Inspection Act 1994*, applies.
- (3) The Minister and the Minister for the time being administering the Act referred to in subsection (2) that is concerned may, by instrument in writing, jointly declare that this Act, or such

**s. 4A**

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provision of or under this Act as is specified in the instrument shall, for such period as is described in the instrument, apply to or in relation to a workplace referred to in subsection (2), or any part of such workplace that is specified in the instrument.

- (4) On the service of a copy of the instrument mentioned in subsection (3) on an employer that would be subject to a duty under this Act if this Act applied in accordance with the instrument, this Act shall so apply in relation to the workplace or part of a workplace concerned to the exclusion of any inconsistent provision of or under the Act referred to in subsection (2) that is concerned.
- (5) A copy of each instrument under subsection (3) shall be published in the *Gazette* as soon as practicable after the instrument is made and before it is so published a person, other than the employer served with the instrument under subsection (4), that is subject to a provision of or under this Act by reason of that subsection is not guilty of an offence against a provision of or under this Act if the person proves that the person did not know, and could not reasonably be expected to have known, that the provision so applied.

*[Section 4 inserted by No. 43 of 1987 s. 7; amended by No. 84 of 1990 s. 2; No. 62 of 1994 s. 109; No. 54 of 2002 s. 5; No. 51 of 2004 s. 74; No. 68 of 2004 s. 94.]*

**4A. Act does not operate to affect adversely certain police operations**

- (1) In this section —  
“**covert operation**” means the performance of a function of a police officer in circumstances where —
  - (a) a covert operation is undertaken by WA Police for the purpose of obtaining information about criminal activity;
  - (b) performance of the function is not practicable without exposing a police officer to a risk of imminent and

serious injury or imminent and serious harm to the police officer's health; and

- (c) unless the performance of the function is secret or confidential, it would be likely that —
  - (i) the effectiveness of the performance of the function is reduced; or
  - (ii) a person is exposed to the danger of physical harm arising from the actions of another person;

**“dangerous operation”** means the performance of a function of a police officer in circumstances where performance of that function —

- (a) is reasonably necessary; and
  - (b) is not practicable without exposing a police officer to a risk of imminent and serious injury or imminent and serious harm to the police officer's health.
- (2) A police officer cannot refuse to work as mentioned in section 26(1) if the refusal to work would adversely affect, or could reasonably be expected to affect adversely, a covert operation or a dangerous operation.
- (3) An inspector cannot issue a prohibition notice under section 49(1) to prohibit an activity if prohibiting the carrying on of the activity would adversely affect, or could reasonably be expected to affect adversely, a covert operation or a dangerous operation.

*[Section 4A inserted by No. 54 of 2002 s. 6.]*

## 5. Objects

The objects of this Act are —

- (a) to promote and secure the safety and health of persons at work;
- (b) to protect persons at work against hazards;

**s. 5**

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

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

## **Part II — Commission for Occupational Safety and Health**

*[Heading inserted by No. 74 of 2003 s. 87(4).]*

### **6. The Commission**

- (1) There shall be a Commission for Occupational Safety and Health.
- (2) The Commission shall consist of —
  - (a) a person nominated by the Minister and appointed by the Governor as chairperson;
  - (b) the Commissioner;
  - (c) 2 persons employed in the Public Service under Part 3 of the *Public Sector Management Act 1994*, of whom —
    - (i) one shall be nominated by the Minister; and
    - (ii) the other shall be an officer of the department, as defined in section 4(1) of the *Mines Safety and Inspection Act 1994*, nominated by the Minister to whom the administration of that Act is committed;and
  - (d) 9 persons appointed by the Governor of whom —
    - (i) 2 shall be persons nominated for appointment by the body known as the Chamber of Commerce and Industry of Western Australia (Inc);
    - (ii) 3 shall be persons, of whom one shall be a person who has knowledge of and experience in the mining industry in the State, nominated for appointment by the body known as The Trades and Labor Council of Western Australia;
    - (iii) 3 shall be persons having knowledge of or experience in occupational safety and health who shall be nominated for appointment by the

**s. 6A**

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Minister after consultation between the Minister and the bodies referred to in subparagraphs (i) and (ii); and

- (iv) one shall be a person nominated by the Chamber of Minerals and Energy of Western Australia Inc.
- (3) Where any of the bodies referred to in subsection (2)(d)(i), (ii) or (iv) fails to make a nomination within 60 days after being requested in writing by the Minister to do so the Governor may appoint any person who is suitably qualified, and any person so appointed shall be deemed to have been nominated pursuant to subsection (2)(d)(i), (ii) or (iv), as the case may be.
- (4) A nomination for the purposes of subsection (2)(c) may be made from time to time, may be made by reference to the holder of a specified office and may be expressed to operate for a period or in such circumstances as are specified in the instrument of nomination.
- (5) In addition to the name mentioned in subsection (1), the Commission may use, and operate under, the name “WorkSafe W A”.
- (6) A person other than the Commission that uses or operates under the name mentioned in subsection (1) or (5), or any name that is so similar that it is likely to be misunderstood as referring to the Commission, commits an offence.
- (7) Nothing in subsection (6) prevents the department of the Public Service principally assisting the Minister in the administration of this Act from using or operating under the name of “WorkSafe Western Australia” or a similar name if that designation is given to it under section 35 of the *Public Sector Management Act 1994*.

*[Section 6 amended by No. 30 of 1995 s. 8; No. 74 of 2003 s. 87(5); No. 51 of 2004 s. 103 and 105.]*

**6A. Deputy chairperson**

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

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

**7. Acting members**

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

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

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

**s. 8**

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- (4) The appointment of a person as an acting member may be terminated at any time by the Minister.

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

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

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

*[Section 8 amended by No. 51 of 2004 s. 75.]*

**9. WorkSafe Western Australia Commissioner**

- (1) The Governor shall appoint a person to be WorkSafe Western Australia Commissioner.
- (2) The Commissioner shall be appointed for such term not exceeding 5 years as is specified in the instrument of appointment and on the expiration of the term is eligible for re-appointment.
- (3) Subject to the *Salaries and Allowances Act 1975*, the Commissioner is entitled to such conditions of service as are determined by the Minister from time to time on the recommendation of the Minister for Public Sector Management<sup>3</sup>.
- (4) If a person appointed to be Commissioner was immediately before that appointment an officer of the Public Service of the State the person shall despite that appointment retain all existing and accruing rights on appointment as Commissioner.
- (5) If a person appointed to be Commissioner was immediately before that appointment a public service officer within the meaning of the



*Public Sector Management Act 1994*, the person is entitled upon resigning his or her office as Commissioner or upon ceasing to be Commissioner to be appointed to an office in the Public Service of the State not lower in status than the office the person so occupied immediately before appointment as Commissioner.

- (6) The Commissioner shall not engage in paid employment outside his or her duties and functions under this Act without first obtaining the approval in writing of the Minister.

*[(7) repealed]*

- (8) In addition to the name mentioned in subsection (1), the Commissioner may use, and operate under, the name “WorkSafe W A Commissioner”.

*[Section 9 amended by No. 43 of 1987 s. 10; No. 55 of 1987 s. 4; No. 32 of 1994 s. 19; No. 30 of 1995 s. 11 and 47; No. 51 of 2004 s. 76 and 102(2).]*

## **10. Vacation of office**

A person’s office as Commissioner or as an appointed member becomes vacant if —

- (a) the person’s term of office expires; or
- (b) the person —
  - (i) dies;
  - (ii) becomes permanently incapable of performing the duties of the office;
  - (iii) resigns from office by written notice addressed to the Minister;
  - (iv) is an undischarged bankrupt or a person whose property is subject to an order or arrangement under the laws relating to bankruptcy;
  - (v) is removed from office by the Governor on the grounds of neglect of duty, incompetence or the person’s behaviour; or

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(vi) is absent without leave of the Minister from  
3 consecutive meetings of the Commission;

or

(c) being a member appointed under section 6(2)(d)(i), (ii)  
or (iv), the person's nomination is revoked.

*[Section 10 inserted by No. 51 of 2004 s. 77.]*

**11. Leave of absence**

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

**12. Casual vacancies**

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

*[Section 12 amended by No. 51 of 2004 s. 102(1).]*

**13. Meetings of the Commission**

- (1) The chairperson may at any time and shall when so requested by the Minister or by not less than 5 members of the Commission convene a meeting of the Commission to be held at a time and place to be determined by the chairperson.
- (2) The Commission shall meet at least 6 times a year at intervals of not more than 3 months.
- (3) The chairperson shall preside at any meeting of the Commission at which he or she is present.
- (4) If both the chairperson and the deputy chairperson are absent from a meeting of the Commission, the members present shall elect by secret ballot one of their number to preside at that meeting and that member shall have, in addition to the powers of a member of the Commission, the powers of the chairperson under this section.

- (5) At a meeting of the Commission 7 members constitute a quorum.
- (6) Subject to subsection (6a), at a meeting of the Commission —
- (a) only members appointed under section 6(2)(d) are entitled to vote; and
  - (b) where any question requiring a vote arises the question shall be decided by a majority of the votes of the members appointed under section 6(2)(d) if, and only if, not less than 6 of those members also constitute such majority.
- (6a) If —
- (a) on a vote at a meeting of the Commission, a majority of the votes of members appointed under section 6(2)(d) is constituted by 5 of those members; and
  - (b) on a vote at a subsequent meeting of the Commission on the same question, a majority of the votes is constituted by 5 of those members,
- the chairperson may, at that subsequent meeting, cast a vote to be included in the majority vote.
- (7) Subject to the presence of a quorum the Commission may act notwithstanding any vacancy in its membership.
- (8) A member of the Commission who has a pecuniary interest whether direct or indirect in any matter to be considered by the Commission shall declare the nature of that interest at every meeting at which the matter is considered.
- (9) Subject to this Act, the Commission may determine its own procedures.
- (10) It is the duty of the Commission to work for the attainment of the objects of this Act by achieving a consensus, as far as this is practicable, among its members.

*[Section 13 amended by No. 30 of 1995 s. 12; No. 51 of 2004 s. 102(1).]*

**14. Functions of the Commission**

- (1) The functions of the Commission are —
- (a) to inquire into and report to the Minister upon any matters referred to it by the Minister;
  - (b) to make recommendations to the Minister with respect to —
    - (i) this Act;
    - (ii) any law or provision of a law, relating to occupational safety and health that is administered by the Minister and any law or provision of a law relating to occupational safety and health that is prescribed for the purposes of this paragraph; and
    - (iii) subsidiary legislation, guidelines and codes of practice proposed to be made under or for the purposes of any prescribed law;
  - (c) to examine, review and make recommendations to the Minister in relation to existing and proposed registration or licensing schemes relating to occupational safety and health;
  - (d) to provide advice to and cooperate with Government departments, public authorities, trade unions, employer organisations and other interested persons in relation to occupational safety and health;
  - (e) to formulate or recommend standards, specifications or other forms of guidance for the purpose of assisting employers, self employed persons and employees to maintain appropriate standards of occupational safety and health;
  - (f) to promote education and training in occupational safety and health as widely as possible;
  - (g) in cooperation with educational authorities or bodies to devise and approve courses in relation to occupational safety and health;

- (h) having regard to the criteria laid down by the National Occupational Health and Safety Commission, to advise persons on training in occupational safety and health and to formulate and accredit training courses in occupational safety and health;
  - (i) to recommend to the Minister the establishment of public inquiries into any matter relating to occupational safety and health;
  - (j) to collect, publish and disseminate information on occupational safety and health;
  - (k) to formulate reporting procedures and monitoring arrangements for identification of workplace hazards, and incidents in which injury or death is likely to occur in an occupational situation; and
  - (l) to commission and sponsor research into occupational safety and health.
- (2) The Commission may issue for public review and comment any regulations, codes of practice or guidelines with respect to which it proposes under subsection (1)(b) to make any recommendations to the Minister.
- (3) The Commission shall ensure, as far as is practicable, that any information it provides is in such language and form as are appropriate for the persons to whom the information is directed.
- (4) The Minister shall within 60 days after receiving from the Commission a recommendation under subsection (1) make reply in writing to the Commission in relation to that recommendation.

*[Section 14 amended by No. 43 of 1987 s. 11; No. 30 of 1995 s. 47.]*

**14A. Mining Industry Advisory Committee**

- (1) In this section —
- “**committee**” means the committee referred to in subsection (2);
- “**mining industry**” means the mining industry in the State;

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**“Ministers”** means —

- (a) the Minister to whom the administration of this Act is committed; and
  - (b) the Minister to whom the administration of the *Mines Safety and Inspection Act 1994* is committed (the **“Minister for Mines”**),  
acting jointly.
- (2) There is to be an advisory committee called the Mining Industry Advisory Committee.
- (3) The functions of the committee are —
- (a) to advise and make recommendations to the Ministers and the Commission on occupational safety and health matters concerning the mining industry; and
  - (b) to liaise with the Commission to coordinate activities on related functions and to maintain parallel standards,

and in particular, but without limiting the generality of paragraphs (a) and (b) —

- (c) to inquire into and report to the Ministers regarding any matter referred to it by the Ministers relating to occupational safety and health in the mining industry;
- (d) to make recommendations to the Minister for Mines regarding the formulation, amendment, or repeal of laws relating to occupational safety and health for which that Minister is responsible;
- (e) to prepare or recommend the adoption of codes of practice, guidelines, standards, specifications or other forms of guidance for the purpose of assisting employers, self-employed persons, employees, manufacturers or other persons to maintain appropriate standards of occupational safety and health in the mining industry; and
- (f) to provide advice on —

- (i) education and publications; and
  - (ii) training and training courses,
- with respect to occupational safety and health in the mining industry.
- (4) The chairperson of the committee is to be the member of the Commission nominated under section 6(2)(c)(ii).
  - (5) Subject to subsection (4), the Ministers —
    - (a) are to appoint the members of; and
    - (b) may alter or reconstitute,the committee.
  - (6) The members of the committee are entitled to be paid such remuneration and travelling and other allowances as may be determined by the Ministers on the recommendation of the Minister for Public Sector Management.
  - (7) Subject to any direction given to it by the Commission, the committee is to determine its own procedures.

*[Section 14A inserted by No. 51 of 2004 s. 106.]*

## **15. Advisory committees**

- (1) The Commission may at any time and when so requested by the Minister shall appoint advisory committees to assist it in the performance of its functions and duties.
- (2) Subject to this section, an advisory committee shall consist of such number of persons as are appointed by the Commission.
- (3) Subject to the direction of the Commission an advisory committee may determine its own procedures.
- (4) The members of advisory committees are entitled to be paid such remuneration and travelling and other allowances as may be determined by the Minister on the recommendation of the Minister for Public Sector Management<sup>3</sup>.

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- (5) In appointing persons to be members of advisory committees under this section the Commission —
- (a) shall, as far as is practicable, appoint persons who represent employers, employees and persons having knowledge of or experience in occupational safety and health; and
  - (b) shall have regard to the desirability of having a reasonable number of men and women, including persons of differing ethnic backgrounds and other groups with special needs.

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

**16. Annual report**

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

*[Section 16 amended by No. 51 of 2004 s. 102(3).]*

**17. Staff to assist the Commission**

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

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

**18. The Commissioner and the department**

- (1) The Commissioner is subject to the control and direction of the Minister, and is responsible to the Minister for the



administration of this Act and any other law relating to occupational safety and health administered by the Minister.

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

*[Section 18 amended by No. 43 of 1987 s. 12; No. 55 of 1987 s. 5; No. 32 of 1994 s. 19; No. 30 of 1995 s. 47; No. 51 of 2004 s. 102(2) and (3).]*

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

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

### **Division 1 — Preliminary**

*[Heading inserted by No. 51 of 2004 s. 16.]*

#### **18A. Meaning of gross negligence in relation to certain breaches of this Part**

- (1) This section applies to a contravention of section 19(1), 20(1) or (3), 21(1) or (2), 21B(2), 22(1), 23(1), (2), (3) or (3a), 23A or 23G(2).
- (2) A contravention of a provision mentioned in subsection (1) is committed in circumstances of gross negligence if —
  - (a) the offender —
    - (i) knew that the contravention would be likely to cause the death of, or serious harm to, a person to whom a duty is owed under that provision; but
    - (ii) acted or failed to act in disregard of that likelihood;
  - and
  - (b) the contravention did in fact cause the death of, or serious harm to, such a person.

*[Section 18A inserted by No. 51 of 2004 s. 16.]*

### **Division 2 — General workplace duties**

*[Heading inserted by No. 51 of 2004 s. 4.]*

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

- (1) An employer shall, so far as is practicable, provide and maintain a working environment in which the employees of the employer

(the “**employees**”) are not exposed to hazards and in particular, but without limiting the generality of the foregoing, an employer shall —

- (a) provide and maintain workplaces, plant, and systems of work such that, so far as is practicable, the employees are not exposed to hazards;
  - (b) provide such information, instruction, and training to, and supervision of, the employees as is necessary to enable them to perform their work in such a manner that they are not exposed to hazards;
  - (c) consult and cooperate with safety and health representatives, if any, and other employees at the workplace, regarding occupational safety and health at the workplace;
  - (d) where it is not practicable to avoid the presence of hazards at the workplace, provide the employees with, or otherwise provide for the employees to have, such adequate personal protective clothing and equipment as is practicable to protect them against those hazards, without any cost to the employees; and
  - (e) make arrangements for ensuring, so far as is practicable, that —
    - (i) the use, cleaning, maintenance, transportation and disposal of plant; and
    - (ii) the use, handling, processing, storage, transportation and disposal of substances,at the workplace is carried out in a manner such that the employees are not exposed to hazards.
- (2) In determining the training required to be provided in accordance with subsection (1)(b) regard shall be had to the functions performed by employees and the capacities in which they are employed.

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*[Section 19 inserted by No. 43 of 1987 s. 13; amended by No. 30 of 1995 s. 13 and 47; No. 51 of 2004 s. 5, 17 and 78.]*

**19A. Breaches of section 19(1)**

- (1) If an employer contravenes section 19(1) in circumstances of gross negligence, the employer commits an offence and is liable to a level 4 penalty.
- (2) If —
  - (a) an employer —
    - (i) contravenes section 19(1); and
    - (ii) by the contravention causes the death of, or serious harm to, an employee;and
  - (b) subsection (1) does not apply,the employer commits an offence and is liable to a level 3 penalty.
- (3) If —
  - (a) an employer contravenes section 19(1); and
  - (b) neither subsection (1) nor subsection (2) applies,the employer commits an offence and is liable to a level 2 penalty.
- (4) An employer charged with an offence under —
  - (a) subsection (1) may, instead of being convicted of that offence, be convicted of an offence under subsection (2) or (3); or
  - (b) subsection (2) may, instead of being convicted of that offence, be convicted of an offence under subsection (3).

*[Section 19A inserted by No. 51 of 2004 s. 18.]*

**20. Duties of employees**

- (1) An employee shall take reasonable care —

- (a) to ensure his or her own safety and health at work; and
  - (b) to avoid adversely affecting the safety or health of any other person through any act or omission at work.
- (2) Without limiting the generality of subsection (1), an employee contravenes that subsection if the employee —
- (a) fails to comply, so far as the employee is reasonably able, with instructions given by the employee's employer for the safety or health of the employee or for the safety or health of other persons;
  - (b) fails to use such protective clothing and equipment as is provided, or provided for, by his or her employer as mentioned in section 19(1)(d) in a manner in which he or she has been properly instructed to use it;
  - (c) misuses or damages any equipment provided in the interests of safety or health; or
  - (d) fails to report forthwith to the employee's employer —
    - (i) any situation at the workplace that the employee has reason to believe could constitute a hazard to any person that the employee cannot correct; or
    - (ii) any injury or harm to health of which he or she is aware that arises in the course of, or in connection with, his or her work.
- (3) An employee shall cooperate with the employee's employer in the carrying out by the employer of the obligations imposed on the employer under this Act.

*[Section 20 inserted by No. 43 of 1987 s. 13; amended by No. 30 of 1995 s. 14 and 47; No. 51 of 2004 s. 19, 79, 102(1) and (2).]*

**20A. Breaches of section 20(1) or (3)**

- (1) If an employee contravenes section 20(1) or (3) in circumstances of gross negligence, the employee commits an offence and is liable —

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- (a) for a first offence, to a fine of \$25 000; and
  - (b) for a subsequent offence, to a fine of \$31 250.
- (2) If —
- (a) an employee —
    - (i) contravenes section 20(1) or (3); and
    - (ii) by the contravention causes the death of, or serious harm to, a person;
  - and
  - (b) subsection (1) does not apply,
- the employee commits an offence and is liable —
- (c) for a first offence, to a fine of \$20 000; and
  - (d) for a subsequent offence, to a fine of \$25 000.
- (3) If —
- (a) an employee contravenes section 20(1) or (3); and
  - (b) neither subsection (1) nor subsection (2) applies,
- the employee commits an offence and is liable —
- (c) for a first offence, to a fine of \$10 000; and
  - (d) for a subsequent offence, to a fine of \$12 500.
- (4) An employee charged with an offence under —
- (a) subsection (1) may, instead of being convicted of that offence, be convicted of an offence under subsection (2) or (3); or
  - (b) subsection (2) may, instead of being convicted of that offence, be convicted of an offence under subsection (3).

*[Section 20A inserted by No. 51 of 2004 s. 20.]*

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

- (1) A self-employed person shall take reasonable care to ensure his or her own safety and health at work.

- (2) An employer or self-employed person shall, so far as is practicable, ensure that the safety or health of a person, not being (in the case of an employer) an employee of the employer, is not adversely affected wholly or in part as a result of —
- (a) work that has been or is being undertaken by —
    - (i) the employer or any employee of the employer;  
or
    - (ii) the self-employed person;
  - or
  - (b) any hazard that arises from or is increased by —
    - (i) the work referred to in paragraph (a); or
    - (ii) the system of work that has been or is being operated by the employer or the self-employed person.

*[Section 21 inserted by No. 43 of 1987 s. 13; amended by No. 30 of 1995 s. 15 and 47; No. 51 of 2004 s. 6 and 21.]*

**21A. Breaches of section 21**

- (1) If an employer or a self-employed person contravenes section 21(1) or (2) in circumstances of gross negligence, the employer or a self-employed person commits an offence and is liable to a level 4 penalty.
- (2) If —
- (a) an employer or self-employed person —
    - (i) contravenes section 21(1) or (2); and
    - (ii) by the contravention causes the death of, or serious harm to, a person;
  - and
  - (b) subsection (1) does not apply,
- the employer or self-employed person commits an offence and is liable to a level 3 penalty.
- (3) If —

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- (a) an employer or self-employed person contravenes section 21(1) or (2); and
  - (b) neither subsection (1) nor subsection (2) applies,
- the employer or self-employed person commits an offence and is liable to a level 2 penalty.
- (4) An employer or self-employed person charged with an offence under —
- (a) subsection (1) may, instead of being convicted of that offence, be convicted of an offence under subsection (2) or (3); or
  - (b) subsection (2) may, instead of being convicted of that offence, be convicted of an offence under subsection (3).

*[Section 21A inserted by No. 51 of 2004 s. 22.]*

**21B. Duty placed on body corporate to which section 23D, 23E or 23F applies**

- (1) If section 23D, 23E or 23F makes any other provision of this Act apply to a body corporate as if it were the employer of a particular person, this section and section 21C apply to the body corporate at such times as the other provision is made to apply.
- (2) A body corporate to which this section applies shall, so far as is practicable, ensure that the safety or health of a person is not adversely affected wholly or in part as a result of —
  - (a) work that has been or is being undertaken by —
    - (i) the body corporate; or
    - (ii) a person carrying out work under the direction of the body corporate;
  - or
  - (b) any hazard that arises from or is increased by —
    - (i) the work referred to in paragraph (a); or
    - (ii) the system of work that has been or is being operated by the body corporate.



*[Section 21B inserted by No. 51 of 2004 s. 7.]*

**21C. Breaches of section 21B**

- (1) If a body corporate contravenes section 21B(2) in circumstances of gross negligence, the body corporate commits an offence and is liable to a level 4 penalty.
- (2) If —
  - (a) a body corporate —
    - (i) contravenes section 21B(2); and
    - (ii) by the contravention causes the death of, or serious harm to, a person;
  - and
  - (b) subsection (1) does not apply,the body corporate commits an offence and is liable to a level 3 penalty.
- (3) If —
  - (a) a body corporate contravenes section 21B(2); and
  - (b) neither subsection (1) nor subsection (2) applies,the body corporate commits an offence and is liable to a level 2 penalty.
- (4) A body corporate charged with an offence under —
  - (a) subsection (1) may, instead of being convicted of that offence, be convicted of an offence under subsection (2) or (3); or
  - (b) subsection (2) may, instead of being convicted of that offence, be convicted of an offence under subsection (3).

*[Section 21C inserted by No. 51 of 2004 s. 7.]*

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

- (1) A person that has, to any extent, control of —

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(a) a workplace where persons who are not employees of that person work or are likely to be in the course of their work; or

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

shall take such measures as are practicable to ensure that the workplace, or the means of access to or egress from the workplace, as the case may be, are such that persons who are at the workplace or use the means of access to and egress from the workplace are not exposed to hazards.

(2) Where a person has, by virtue of a contract or lease, an obligation of any extent in relation to the maintenance or repair of a workplace or the means of access to and egress from the workplace, the person shall be treated for the purposes of subsection (1) as being a person that has control of that workplace or that means of access or egress.

(3) A reference in this section to a person having control of any workplace or means of access to or egress from a workplace is a reference to a person having control of that workplace or that means of access or egress in connection with the carrying on by that person of a trade, business or undertaking (whether for profit or not).

*[(4)-(6) repealed]*

(7) This section does not apply to a person whose duties are set out in section 20.

*[Section 22 inserted by No. 30 of 1995 s. 16; amended by No. 51 of 2004 s. 23, 80 and 103.]*

**22A. Breaches of section 22(1)**

(1) If a person contravenes section 22(1) in circumstances of gross negligence, the person commits an offence and is liable to a level 4 penalty.

(2) If —

(a) a person —

- (i) contravenes section 22(1); and
  - (ii) by the contravention causes the death of, or serious harm to, a person —
    - (I) who is at; or
    - (II) who is using the means of access to or egress from,  
the workplace;
- and
- (b) subsection (1) does not apply,  
the person commits an offence and is liable to a level 3 penalty.
- (3) If —
- (a) a person contravenes section 22(1); and
  - (b) neither subsection (1) nor subsection (2) applies,  
the person commits an offence and is liable to a level 2 penalty.
- (4) A person charged with an offence under —
- (a) subsection (1) may, instead of being convicted of that offence, be convicted of an offence under subsection (2) or (3); or
  - (b) subsection (2) may, instead of being convicted of that offence, be convicted of an offence under subsection (3).

*[Section 22A inserted by No. 51 of 2004 s. 24.]*

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

- (1) A person that designs, manufactures, imports or supplies any plant for use at a workplace shall, so far as is practicable —
  - (a) ensure that the design and construction of the plant is such that persons who properly install, maintain or use the plant are not in doing so, exposed to hazards;
  - (b) test and examine, or arrange for the testing and examination of, the plant so as to ensure that its design and construction are as mentioned in paragraph (a); and

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- (c) ensure that adequate information in respect of —
  - (i) any dangers associated with the plant;
  - (ii) the specifications of the plant and the data obtained on the testing of the plant as mentioned in paragraph (b);
  - (iii) the conditions necessary to ensure that persons properly using the plant are not, in so doing, exposed to hazards; and
  - (iv) the proper maintenance of the plant, is provided when the plant is supplied and thereafter whenever requested.
- (2) A person that erects or installs any plant for use at a workplace shall, so far as is practicable, ensure that it is so erected or installed that persons who properly use the plant are not subjected to any hazard that arises from, or is increased by, the way in which the plant is erected or installed.
- (3) A person that manufactures, imports or supplies any substance for use at a workplace shall, so far as is practicable, ensure that adequate toxicological data in respect of the substance and such other data as is relevant to the safe use, handling, processing, storage, transportation and disposal of the substance is provided —
  - (a) when the substance is supplied; and
  - (b) thereafter whenever requested.
- (3a) A person that designs or constructs any building or structure, including a temporary structure, for use at a workplace shall, so far as is practicable ensure that the design and construction of the building or structure is such that —
  - (a) persons who properly construct, maintain, repair or service the building or structure; and

(b) persons who properly use the building or structure,  
are not, in doing so, exposed to hazards.

*[Section 23 inserted by No. 43 of 1987 s. 13; amended by  
No. 30 of 1995 s. 17; No. 51 of 2004 s. 25, 81 and 103.]*

**23AA. Breaches of section 23**

- (1) If a person contravenes section 23(1), (2), (3) or (3a) in circumstances of gross negligence, the person commits an offence and is liable to a level 4 penalty.
- (2) If —
  - (a) a person —
    - (i) contravenes section 23(1), (2), (3) or (3a); and
    - (ii) by the contravention causes the death of, or serious harm to, a person to whom a duty is owed under that subsection;
  - and
  - (b) subsection (1) does not apply,the person commits an offence and is liable to a level 3 penalty.
- (3) If —
  - (a) a person contravenes section 23(1), (2), (3) or (3a); and
  - (b) neither subsection (1) nor subsection (2) applies,the person commits an offence and is liable to a level 2 penalty.
- (4) A person charged with an offence under —
  - (a) subsection (1) may, instead of being convicted of that offence, be convicted of an offence under subsection (2) or (3); or
  - (b) subsection (2) may, instead of being convicted of that offence, be convicted of an offence under subsection (3).

*[Section 23AA inserted by No. 51 of 2004 s. 26.]*

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

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

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

*[(2)-(4) repealed]*

*[Section 23A inserted by No. 30 of 1995 s. 18; amended by No. 51 of 2004 s. 27.]*

**23B. Breaches of section 23A**

- (1) If a person contravenes section 23A in circumstances of gross negligence, the person commits an offence and is liable to a level 4 penalty.

- (2) If —
- (a) a person —
    - (i) contravenes section 23A; and
    - (ii) by the contravention causes the death of, or serious harm to, a person;

and

- (b) subsection (1) does not apply,

the person commits an offence and is liable to a level 3 penalty.

- (3) If —
- (a) a person contravenes section 23A; and
  - (b) neither subsection (1) nor subsection (2) applies,
- the person commits an offence and is liable to a level 2 penalty.

- (4) A person charged with an offence under —
- (a) subsection (1) may, instead of being convicted of that offence, be convicted of an offence under subsection (2) or (3); or
  - (b) subsection (2) may, instead of being convicted of that offence, be convicted of an offence under subsection (3).

*[Section 23B inserted by No. 51 of 2004 s. 28.]*

**Division 3 — Certain workplace situations to be treated as employment**

*[Heading inserted by No. 51 of 2004 s. 8.]*

**23C. Terms used in this Division**

In this Division —

“**business**” includes the operations of a public authority;

“**public authority**” means —

- (a) a Minister of the Crown acting in the Minister’s official capacity;
- (b) a State Government department, State trading concern, State instrumentality or State agency; or
- (c) any other body or person, whether corporate or not and including a local government, that under a written law administers or carries on a social service or public utility for the benefit of the State or a part of the State.

*[Section 23C inserted by No. 51 of 2004 s. 8.]*

**23D. Contract work arrangements**

- (1) This section applies where a person (the “**principal**”) in the course of trade or business engages a contractor (the “**contractor**”) to carry out work for the principal.

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- (2) Where this section applies, section 19 has effect —
- (a) as if the principal were the employer of —
    - (i) the contractor; and
    - (ii) any person employed or engaged by the contractor to carry out or assist in carrying out the work concerned,in relation to matters over which the principal has the capacity to exercise control; and
  - (b) as if —
    - (i) the contractor; and
    - (ii) any person referred to in paragraph (a)(ii),were employees of the principal in relation to matters over which the principal has the capacity to exercise control.
- (3) Where this section applies, the further duties referred to in subsection (4) apply —
- (a) as if the principal were the employer of —
    - (i) the contractor; and
    - (ii) any person employed or engaged by the contractor to carry out or assist in carrying out the work concerned;and
  - (b) as if —
    - (i) the contractor; and
    - (ii) any person referred to in paragraph (a)(ii),were employees of the principal.
- (4) The further duties mentioned in subsection (3) are —
- (a) the duties of an employee under section 20; and
  - (b) the duties of an employer under sections 23G(2) and 23I(3).



- (5) An agreement or arrangement is void for the purposes of this section if it purports to give control to —
- (a) a contractor; or
  - (b) a person referred to in subsection (2)(a)(ii),
- of any matter that —
- (c) comes within section 19 or 23G(2); and
  - (d) is a matter over which the principal has the capacity to exercise control,
- but this subsection does not prevent the making of a written agreement as mentioned in section 23G(3).
- (6) A purported waiver by a contractor of a right that arises directly or indirectly under this section is void.
- (7) Nothing in this section derogates from —
- (a) the duties of the principal to the contractor; or
  - (b) the duties of the contractor to any person employed or engaged by the contractor.

*[Section 23D inserted by No. 51 of 2004 s. 8.]*

**23E. Labour arrangements in general**

- (1) This section applies where —
- (a) a person (the “**worker**”) for remuneration carries out work for another person (the “**person mentioned in subsection (1)(a)**”) in the course of trade or business;
  - (b) that person has the power of direction and control in respect of the work in a similar manner to the power of an employer under a contract of employment;
  - (c) there is no contract of employment between the worker and that person; and
  - (d) neither section 23D nor section 23F applies.

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- (2) Where this section applies, section 19 has effect as if —
- (a) the person mentioned in subsection (1)(a) were the employer of the worker; and
  - (b) the worker were the employee of that person,
- in relation to any matter that —
- (c) comes within section 19; and
  - (d) is a matter over which that person has the capacity to exercise control.
- (3) Where this section applies, the further duties referred to in subsection (4) apply as if —
- (a) the person mentioned in subsection (1)(a) were the employer of the worker; and
  - (b) the worker were the employee of that person.
- (4) The further duties mentioned in subsection (3) are —
- (a) the duties of an employee under section 20; and
  - (b) the duties of an employer under section 23I(3).
- (5) An agreement or arrangement is void for the purposes of this section to the extent that it purports to give control to the worker of any matter that —
- (a) comes within section 19; and
  - (b) is a matter over which the person mentioned in subsection (1)(a) has the capacity to exercise control.
- (6) This section applies despite anything to the contrary in, or any inconsistent provision of, an agreement, whether made orally or in writing.
- (7) A purported waiver by a worker of a right that arises directly or indirectly under this section is void.

*[Section 23E inserted by No. 51 of 2004 s. 8.]*

**23F. Labour hire arrangements**

(1) In this section —

**“agent”** —

- (a) means a person that carries on a business of providing workers to carry out work for clients of the person;  
and
- (b) includes a group training organisation as defined in section 7(1) of the *Industrial Relations Act 1979*;

**“worker”** includes an employee or a contractor.

(2) This section applies where, under a labour hire arrangement, work is carried out for remuneration by a worker for a client of an agent (the **“client”**) in the course of the client’s trade or business.

(3) A labour hire arrangement exists where —

- (a) an agent has for remuneration agreed with the client to provide a worker to carry out work for the client;
- (b) there is no contract of employment between the worker and the client in relation to the work;
- (c) there is an agreement (which may be a contract of employment) between the worker and the agent as to the carrying out of work including in respect of remuneration and other entitlements; and
- (d) that agreement applies to the carrying out of the work by the worker for the client.

(4) Where this section applies, section 19 has effect as if —

- (a) each of the agent and the client were the employer of the worker; and
- (b) the worker were an employee of each of the agent and the client,

in relation to any matter that —

- (c) comes within section 19; and

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- (d) as regards —
  - (i) the agent, is a matter over which the agent has the capacity to exercise control; or
  - (ii) the client, is a matter over which the client has the capacity to exercise control.
- (5) Where this section applies, the further duties referred to in subsection (6) apply as if —
  - (a) each of the agent and the client were the employer of the worker; and
  - (b) the worker were an employee of each of the agent and the client.
- (6) The further duties mentioned in subsection (5) are —
  - (a) the duties of an employee under section 20; and
  - (b) the duties of an employer under section 23I(3).
- (7) This section applies despite anything to the contrary in, or any inconsistent provision of, an agreement, whether made orally or in writing.
- (8) A purported waiver by a worker of a right that arises directly or indirectly under this section is void.

*[Section 23F inserted by No. 51 of 2004 s. 8.]*

**Division 4 — Duty relating to certain  
employment accommodation**

*[Heading inserted by No. 51 of 2004 s. 8.]*

**23G. Duty of employer to maintain safe premises**

- (1) In this section —
  - “residential premises”** —
    - (a) means residential premises that are situated outside —
      - (i) a townsite within the meaning in section 26(1) of the *Land Administration Act 1997*; and

- (ii) the metropolitan region as defined in the *Planning and Development Act 2005*;
  - and
  - (b) includes land and outbuildings that are intended to be used in connection with the occupation of the premises.
- (2) Where —
- (a) an employee occupies residential premises that are owned by or under the control of the employee's employer; and
  - (b) the occupancy is necessary for the purposes of the employment because other accommodation is not reasonably available in the area concerned,
- the employer must, so far as is practicable, maintain the premises so that the employee occupying the premises is not exposed to hazards at the premises.
- (3) Subsection (2) does not apply if the occupancy is pursuant to a written agreement containing terms that might reasonably be expected to apply to a letting of the residential premises to a tenant.
- (4) This section does not apply to the occupation of residential premises by an employee who is employed at a workplace referred to in section 4(2).

*[Section 23G inserted by No. 51 of 2004 s. 8; amended by No. 38 of 2005 s. 15.]*

**23H. Breaches of section 23G**

- (1) If an employer contravenes section 23G(2) in circumstances of gross negligence, the employer commits an offence and is liable to a level 4 penalty.

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- (2) If —
- (a) an employer —
    - (i) contravenes section 23G(2); and
    - (ii) by the contravention causes the death of, or serious harm to, an employee occupying premises as mentioned in that section;
  - and
  - (b) subsection (1) does not apply,
- the employer commits an offence and is liable to a level 3 penalty.
- (3) If —
- (a) an employer contravenes section 23G(2); and
  - (b) neither subsection (1) nor subsection (2) applies,
- the employer commits an offence and is liable to a level 2 penalty.
- (4) In proceedings against a person for an offence under subsection (1) or (2) it is a defence if the person proves that the death or serious harm, as the case may be, would not have occurred if the employee had taken reasonable care to ensure the employee's own safety and health at the premises concerned.
- (5) An employer charged with an offence under —
- (a) subsection (1) may, instead of being convicted of that offence, be convicted of an offence under subsection (2) or (3); or
  - (b) subsection (2) may, instead of being convicted of that offence, be convicted of an offence under subsection (3).

*[Section 23H inserted by No. 51 of 2004 s. 8.]*

**Division 5 — Other duties**

*[Heading inserted by No. 51 of 2004 s. 8.]*

**23I. Notification of deaths, injuries and diseases**

(1) In this section —

**“business of an employer”** means —

- (a) the conduct of the undertaking or operations of an employer; and
- (b) work undertaken by an employer or any employee of an employer;

**“business of a self-employed person”** means —

- (a) the conduct of the undertaking or operations of a self-employed person; and
- (b) work undertaken by that person.

(2) This section applies where —

(a) at a workplace, or at residential premises to which section 23G(2) applies, an employee incurs an injury, or is affected by a disease, that —

- (i) results in the death of the employee; or
- (ii) is of a kind that is prescribed;

or

(b) at a workplace, a person who is not an employee incurs an injury in prescribed circumstances that —

- (i) results in the death of the person; or
- (ii) is of a kind that is prescribed,

in connection with —

- (iii) the business of an employer; or
- (iv) the business of a self-employed person.

(3) The relevant person must —

- (a) forthwith; or

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- (b) as otherwise provided by the regulations,  
notify the Commissioner in the prescribed form of the injury or  
disease giving such particulars as may be prescribed.
- (4) The relevant person is the employer concerned where —
- (a) subsection (2)(a) applies; or
  - (b) the person incurs the injury in connection with the  
business of an employer.
- (5) The relevant person is the self-employed person concerned  
where the person incurs the injury in connection with the  
business of a self-employed person.

*[Section 23I inserted by No. 51 of 2004 s. 8.]*

**23J. Breaches of section 23I**

- (1) If an employer or self-employed person contravenes  
section 23I(3), the employer or self-employed person commits  
an offence.
- (2) In proceedings for an offence under subsection (1) against a  
person who is taken by section 23D(2) to be an employer it is a  
defence if the person proves that subsection (4) applies.
- (3) In proceedings against a person for an offence under  
subsection (1) that relates to an injury mentioned in  
section 23I(2)(b) it is a defence if the person proves that  
subsection (4) applies.
- (4) This subsection applies if the person did not know, and could  
not reasonably be expected to have known, of the injury or  
disease concerned.

*[Section 23J inserted by No. 51 of 2004 s. 8.]*

**23K. Duty to inform employee who reports a hazard or injury**

- (1) This section applies where an employer receives from an  
employee a report of a kind described in section 20(2)(d).



- (2) The employer must, within a reasonable time after receiving the report —
- (a) investigate the matter that has been reported and determine the action, if any, that the employer intends to take in respect of the matter; and
  - (b) notify the employee of the determination so made.
- (3) If an employer contravenes subsection (2), the employer commits an offence.

*[Section 23K inserted by No. 51 of 2004 s. 8.]*

**23L. Notification of hazard to person having control of workplace**

- (1) In this section —
- “workplace”** includes the means of access to and egress from the workplace.
- (2) If —
- (a) the employer of any employee; or
  - (b) a self-employed person carrying out work,
- at a workplace becomes of the opinion that —
- (c) a situation exists at the workplace that could constitute a hazard to any person;
  - (d) the hazard is one that a person having control of the relevant part of the workplace (the **“responsible person”**) has a duty to remedy under section 22; and
  - (e) the situation has not come to the attention of that person,
- the employer or self-employed person must, so far as it is reasonably practicable to do so, give notice of the situation to the responsible person.
- (3) A notice under subsection (2) must be given as soon as is reasonably practicable after the employer or self-employed person becomes of the opinion mentioned in that subsection.

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- (4) An employer or self-employed person that fails to comply with subsection (2) commits an offence.

*[Section 23L inserted by No. 51 of 2004 s. 8.]*

**Division 6 — Resolution of workplace issues, and refusal to work on grounds of risk**

*[Heading inserted by No. 51 of 2004 s. 8.]*

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

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

- (a) the safety and health representative;
- (b) the safety and health committee; or
- (c) the employees,

whichever is specified in the relevant procedure.

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

*[Section 24 inserted by No. 43 of 1987 s. 13; amended by No. 30 of 1995 s. 47; No. 51 of 2004 s. 82.]*

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

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

*[Section 25 inserted by No. 43 of 1987 s. 13; amended by No. 30 of 1995 s. 19; No. 51 of 2004 s. 102(1).]*

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

- (1) Nothing in section 25 prevents an employee from refusing to work where he or she has reasonable grounds to believe that to continue to work would expose him or her or any other person to a risk of imminent and serious injury or imminent and serious harm to his or her health.
  - (1a) In determining whether an employee has reasonable grounds for the belief referred to in subsection (1) it is relevant to consider whether an inspector has attended the workplace upon being notified under section 25(1) of the risk and whether —
    - (a) the measures, if any, required by the inspector to be taken to remedy the matters giving rise to the risk have been taken;
    - (b) the requirements, if any, of the inspector to remedy the matters giving rise to the risk have ceased to have effect; or
    - (c) the inspector has determined that no action is required to be taken under this Act.

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- (2) An employee who refuses to work as mentioned in subsection (1) shall forthwith notify his or her employer and, if there is a safety and health representative for the workplace concerned, such safety and health representative, and the matter shall be regarded as an issue to which section 24(1) applies.
- (2a) An employee who refuses to work as mentioned in subsection (1) shall not leave the workplace concerned until the employee has notified the employer under subsection (2) and that employer has authorised the employee to leave that workplace.
- (2b) Subsection (2a) does not apply if the employee has reasonable grounds to believe that to remain at the workplace concerned would expose the employee to a risk of imminent and serious injury or imminent and serious harm to his or her health.
- (3) An employee who contravenes subsection (2) or (2a) commits an offence.

*[Section 26 inserted by No. 43 of 1987 s. 13; amended by No. 30 of 1995 s. 20 and 47; No. 51 of 2004 s. 102.]*

**27. Assignment of other work**

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

*[Section 27 inserted by No. 43 of 1987 s. 13; amended by No. 51 of 2004 s. 83 and 102(2).]*

**28. Entitlements to continue**

- (1) An employee who refuses to work as mentioned in section 26(1) is entitled to the same pay and other benefits, if any, to which he or she would be entitled if the employee had continued to do his or her usual work.
- (1a) Subsection (1) does not apply if —

- (a) the employee leaves the workplace without the authorisation of the employer as required under section 26(2a); or
  - (b) the employee refuses to do reasonable alternative work that the employee is given under section 27.
- (2) A dispute arising as to —
- (a) whether a person is entitled to any pay or benefit; or
  - (b) the pay or benefit to which a person is entitled,

in accordance with subsection (1), may be referred by any party to the dispute to the Tribunal for determination.

*[Section 28 inserted by No. 43 of 1987 s. 13; amended by No. 30 of 1995 s. 21 and 47; No. 51 of 2004 s. 69(1), 84, 102(1) and (2).]*

**28A. Offences — refusal to work**

- (1) In this section “**disentitled employee**” means an employee who refuses to work for any period —
- (a) on the grounds that to do so would involve a risk of injury or harm to the health of any person; or
  - (b) on the grounds that another employee refuses to work because to do so would involve a risk of injury or harm to the health of any person,

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

- (2) An employee who accepts from his or her employer, in respect of any period during which that employee is a disentitled employee, any pay or other benefits to which the employee would have been entitled if he or she had continued to work commits an offence.
- (3) An employer that pays or provides to an employee, in respect of any period during which the employee is a disentitled employee,

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any pay or other benefits to which the employee would have been entitled if the employee had continued to work commits an offence.

- (4) In subsections (2) and (3) a reference to pay and other benefits does not include a reference to any payment or benefit prescribed for the purposes of this section.
- (5) This section has effect despite any provision of any other written law, including the *Industrial Relations Act 1979*, and any order, award or agreement made or registered under that Act.

*[Section 28A inserted by No. 30 of 1995 s. 22; amended by No. 51 of 2004 s. 103.]*

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

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

### **Division 1 — Safety and health representatives**

*[Heading inserted by No. 51 of 2004 s. 39.]*

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

- (1) An employee who works at a workplace may give notice to the employer requiring the election of a safety and health representative for the workplace.
- (2) The fact that a notice under subsection (1) requires an election for the workplace at which the employee works does not prevent —
  - (a) the establishment of a scheme under section 30A that extends beyond that workplace; or
  - (b) the making of a determination under section 30(4a) for that purpose.

*[Section 29 inserted by No. 43 of 1987 s. 13; amended by No. 30 of 1995 s. 47; No. 51 of 2004 s. 40.]*

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

- (1) An employer shall, within 21 days of being given notice under section 29 requiring the election of a safety and health representative, invite the employees who work at the workplace in respect of which the notice is given to appoint a delegate or delegates in accordance with subsection (3).
- (2) An employer may, at any time the employer requires the election of a safety and health representative for a workplace of the employer, invite the employees who work at the workplace to appoint a delegate or delegates in accordance with subsection (3).

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- (3) The employees who work at a workplace may, upon being invited under this section to do so, appoint a delegate or delegates from amongst their number to represent them.
- (3a) An employer shall consult with the delegate or delegates, as the case requires, appointed under this section as to the matters which are required to be determined under this section.
- (4) The matters requiring to be determined under this section in relation to an election are —
- (a) the number of safety and health representatives to be elected;
  - (b) the matters, areas or kinds of work in respect of which each safety and health representative is to exercise functions, so far as those things are not to be dealt with by provision of a kind mentioned in section 30B(2) or (3);
  - (ba) how a vacancy in an office of safety and health representative that occurs in the circumstances mentioned in section 32(2)(b), (ba), (c) or (d) is to be dealt with; and
  - (c) the person by whom and the manner in which the election is to be conducted.
- (4a) The employer and the delegate or delegates consulting under subsection (3a) may determine that provision of a kind mentioned in section 30B(2) or (3) should be made.
- (5) For the purposes of subsection (4)(c), but without limiting the generality of that provision, the employer and the delegate or delegates consulting under subsection (3a) may determine that —
- (a) the Electoral Commissioner appointed under the *Electoral Act 1907*; or
  - (b) an organisation registered under Part II Division 4 of the *Industrial Relations Act 1979*,



is to be requested to conduct an election.

- (6) Any matter mentioned in subsection (4) that remains unresolved notwithstanding attempts to resolve it under subsection (3a) may be referred to the Commissioner who shall, if unable to resolve the matter to the satisfaction of each of the parties concerned, refer the matter to the Tribunal for determination.
- (7) If an employer contravenes subsection (1) or (3a), the employer commits an offence.

*[Section 30 inserted by No. 43 of 1987 s. 13; amended by No. 30 of 1995 s. 23 and 47; No. 51 of 2004 s. 41, 69(1) and 85.]*

**30A. Election scheme may be established**

- (1) In this section —  
“**consulting parties**” means the employer and the delegate or delegates consulting under section 30(3a) on matters relating to the election of a safety and health representative for a workplace, and includes any delegates or delegates appointed under section 30C.
- (2) If the consulting parties in respect of a workplace have made a determination referred to in section 30(4a), a written agreement may be made between the consulting parties establishing a scheme under this section.
- (3) If the consulting parties cannot reach agreement on any matter for the purposes of subsection (2) they may refer the matter to the Commissioner, who is to attempt to resolve it to the satisfaction of the consulting parties.
- (4) If the Commissioner is unable to resolve the matter, the Commissioner is to refer it to the Tribunal for determination.
- (5) If subsection (4) applies, references in this Division to a scheme under this section are references to a scheme consisting of the provisions of —

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- (a) an agreement under subsection (2); and
- (b) the determination of the Tribunal under subsection (4).

*[Section 30A inserted by No. 51 of 2004 s. 42.]*

**30B. What may be included in a scheme**

- (1) In this section —  
“**contractor**” and “**principal**” have the meanings given to those terms in section 23D(1).
- (2) A scheme under section 30A (a “**scheme**”) may include provision for the election of one or more safety and health representatives for —
  - (a) one or more workplaces in addition to the workplace referred to in section 30A(2); or
  - (b) any group of employees of the employer concerned that constitutes a distinct unit of the employer’s workforce,or may make provision for both of those matters, as the case may require.
- (3) A scheme may despite any provision of this Part —
  - (a) provide for —
    - (i) a contractor; and
    - (ii) any person employed by a contractor, to be treated, for the purposes of this Part, as employees of the principal that engages the contractor; and
  - (b) provide for the principal that engages a contractor to be treated, for the purposes of this Part, as the employer of —
    - (i) the contractor; and
    - (ii) any person employed by the contractor.
- (4) A scheme may make provision for —

- (a) the scheme to apply to any subsequent election of a safety and health representative; and
- (b) the manner in which an amendment may be made to the scheme after it has been determined.

*[Section 30B inserted by No. 51 of 2004 s. 42.]*

**30C. Appointment of further delegates may be required**

- (1) In this section —  
“**additional employees**” means employees who have not been invited to appoint a delegate or delegates under section 30(1) or (2) because that subsection has not become applicable to the workplace at which they work.
- (2) A scheme under section 30A cannot make provision of the kind mentioned in section 30B(2) that will affect additional employees unless subsection (3) of this section is complied with.
- (3) If it is proposed that such provision be made the employer must invite any additional employees at a workplace to appoint a delegate or delegates in accordance with subsection (4).
- (4) Additional employees who work at a workplace may, upon being invited under subsection (3) to do so, appoint a delegate or delegates from amongst their number to represent them for the purposes of making an agreement under section 30A(2).

*[Section 30C inserted by No. 51 of 2004 s. 42.]*

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

- (1) In this section —  
“**election**” means an election required for the purpose of electing a safety and health representative following —
  - (a) the giving of a notice under section 29 in relation to a workplace; or
  - (b) a decision of an employer under section 30(2);

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**“relevant employee”**, in relation to an election, means —

- (a) an employee who works at the workplace to which the election relates; or
- (b) if a scheme has been established under section 30A for the election, an employee who —
  - (i) works at a workplace; or
  - (ii) is a member of a group of employees, to which the scheme applies.

*[(2)-(5) repealed]*

- (6) Subject to this section, an election shall be conducted and safety and health representatives shall be elected in accordance with —
  - (a) any determination under section 30; and
  - (b) if applicable, a scheme established under section 30A.
- (6a) If there is any inconsistency between a determination under section 30 and a scheme established under section 30A, the latter prevails.
- (7) An election shall be by secret ballot.
- (8) Every relevant employee is entitled to vote at an election.
- (8a) Only a relevant employee is eligible to be elected as a safety and health representative at an election.
- (9) If, after the relevant steps provided for by or under this Division have been taken, only one eligible candidate is nominated for election to an office of safety and health representative —
  - (a) a ballot need not to be held; and
  - (b) that candidate shall be deemed to have been duly elected.
- (10) The person conducting an election shall notify the Commissioner and the employer concerned of the results of the election.
- (11) Where a question relating to an election arises, the matter may be referred by any person interested in the question to the

Commissioner who shall, if he or she is unable to resolve the matter to the satisfaction of the persons concerned, refer the matter to the Tribunal for determination.

*[Section 31 inserted by No. 43 of 1987 s. 13; amended by No. 30 of 1995 s. 24 and 47; No. 51 of 2004 s. 43, 69(1) and 102(1).]*

**32. Terms of office**

- (1) A person who is elected as a safety and health representative holds office, subject to this Act, for a term of 2 years.
- (2) A person ceases to hold office as a safety and health representative if —
  - (a) the person's term of office expires and the person is not re-elected;
  - (b) the person ceases to be an employee who works at a workplace for which the person was elected;
  - (ba) if the person was elected for a group of employees pursuant to a scheme under section 30A, the person ceases to be an employee who belongs to that group of employees;
  - (c) the person resigns from office by notice given to the employer;
  - (d) he or she is disqualified under section 34.

*[Section 32 inserted by No. 43 of 1987 s. 13; amended by No. 30 of 1995 s. 47; No. 51 of 2004 s. 45, 86 and 102(1).]*

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

- (1) The functions of a safety and health representative are, in the interests of safety and health at the workplace for which he or she was elected —
  - (a) to inspect that workplace or any part of it —
    - (i) at such times as are agreed with the employer; or

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- (ii) where he or she has not inspected the workplace, or that part of it, in the preceding 30 days, at any time upon giving reasonable notice to the employer;
  - (b) immediately, in the event of an accident, a dangerous occurrence, or a risk of imminent and serious injury to, or imminent and serious harm to the health of, any person, to carry out any appropriate investigation in respect of the matter;
  - (c) to keep himself or herself informed as to the safety and health information provided by his or her employer in accordance with this Act and liaise as necessary with the department and other Government and private bodies;
  - (d) forthwith to report to the employer any hazard or potential hazard to which any person is, or might be, exposed at the workplace that comes to his or her notice;
  - (e) where there is a safety and health committee for the workplace, to refer to it any matters that he or she thinks should be considered by the committee;
  - (f) to consult and cooperate with his or her employer on all matters relating to the safety or health of persons in the workplace;
  - (g) liaise with the employees regarding matters concerning the safety or health of persons in the workplace.
- (2) A safety and health representative for a workplace has such powers as are necessary for the carrying out of the safety and health representative's functions under this Part and in particular, but without limiting the generality of this provision may, where requested to do so by an inspector, accompany an inspector while the inspector is carrying out, at the workplace, any of the inspector's functions under this Act.
- (3) A safety and health representative incurs no civil liability arising from his or her performance of, or his or her failure to perform, any function of a safety and health representative under this Act.

- (4) If a scheme has been established under section 30A, the references in this section to **“the workplace”**, **“that workplace”** and **“a workplace”** include —
- (a) if the scheme applies to more than one workplace, each workplace to which the scheme applies; and
  - (b) if under the scheme a safety and health representative is elected for a group of employees, each workplace or part of a workplace at which any member of the group works.

*[Section 33 inserted by No. 43 of 1987 s. 13; amended by No. 30 of 1995 s. 25 and 47; No. 51 of 2004 s. 46, 87, 102(1) and (2).]*

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

- (1) A party mentioned in subsection (2) may refer to the Tribunal the question of whether a safety and health representative should be disqualified on the grounds that —
- (a) he or she has done anything under this Act with the intention only of causing harm to the representative’s employer or a commercial or business undertaking of the employer;
  - (b) he or she has used or disclosed any information acquired from the representative’s employer in his or her capacity as a safety and health representative for a purpose that is not connected with the performance of his or her functions under this Act with the intention of causing harm to the employer or a commercial or business undertaking of the employer; or
  - (c) he or she has failed adequately to perform his or her functions under this Act,
- or on any number of those grounds.
- (2) A reference under subsection (1) relating to the disqualification of a safety and health representative may be made by —
- (a) his or her employer;

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- (b) a relevant employee; or
  - (c) the Commissioner.
- (3) If, upon a reference under subsection (1), the Tribunal is satisfied that grounds for the disqualification of the safety and health representative exist, the Tribunal may disqualify him or her for a specified period, or permanently, from holding office as a safety and health representative.
- (4) In determining what disqualification, if any, should be imposed under subsection (3), the Tribunal shall take into account —
- (a) the harm, if any, caused to the employer or a commercial or business undertaking of the employer;
  - (b) the past record of the safety and health representative in performing his or her functions under this Act; and
  - (c) whether the safety and health representative acted contrary to the public interest,
- and may take into account any other matters that the Tribunal considers relevant.
- (5) In subsection (2)(b) —
- “relevant employee”** means —
- (a) an employee who works at the workplace concerned;
  - (b) if the safety and health representative was elected for more than one workplace pursuant to a scheme established under section 30A, an employee who works at any such workplace; or
  - (c) if under a scheme referred to in paragraph (b) the safety and health representative was elected for a group of employees, an employee who is a member of the group.

*[Section 34 inserted by No. 43 of 1987 s. 13; amended by No. 30 of 1995 s. 26 and 47; No. 51 of 2004 s. 47, 69(1), (2), 88 and 102.]*



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

- (1) Where there is any safety and health representative for a workplace the employer shall —
- (a) subject to subsection (2), make available to each safety and health representative such information as the employer has, or could reasonably be expected to have, relating to —
    - (i) hazards to persons that arise or may arise at the workplace;
    - (ii) so far as it is relevant to the hazards mentioned in subparagraph (i), the plant and substances used at the workplace and the systems of work at the workplace; and
    - (iii) the safety and health of employees who work at the workplace;
  - (b) where an employee so requests, permit a safety and health representative to be present at any interview concerning occupational safety or health between the employer or the employer's representative and the employee;
  - (c) consult with safety and health representatives on intended changes to the workplace or the plant or substances used at the workplace where those changes may reasonably be expected to affect the safety or health of employees at the workplace;
  - (d) ensure that a safety and health representative receives any entitlement that becomes due to him or her under subsection (1b) or (3);
  - [(e) deleted]*
  - (f) where any accident or dangerous occurrence takes place in a workplace where employees who are represented by a safety and health representative work, ensure that the

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safety and health representative is notified thereof  
forthwith; and

- (g) provide safety and health representatives with such facilities and assistance as are necessary or prescribed for the purposes of the performance by them of their functions under this Part.
- (1a) If, pursuant to a scheme under section 30A, a safety and health representative has been elected for a group of employees, the references in subsection (1) to “**a workplace**” and “**the workplace**” include any workplace at which any member of the group works.
- (1b) Where a safety and health representative attends a course of training —
- (a) for which, under subsection (3), the representative is entitled to take time off work; and
  - (b) that is prescribed for the purposes of this paragraph,
- the employer is liable to pay, to the extent that is prescribed —
- (c) the tuition fee for the course; and
  - (d) other costs incurred by the representative in connection with attendance at the course.
- (2) An employer —
- (a) shall not make available to a safety and health representative any medical information concerning an employee unless —
    - (i) the employee has consented to the employer doing so; or
    - (ii) it is in a form that does not identify, nor permit the identification of, the employee;
- and
- (b) is not required by subsection (1)(a) to make available information disclosing a trade secret.

- (3) The regulations may prescribe the entitlements of a safety and health representative for the purposes of —
- (a) performing his or her functions under this Act; and
  - (b) his or her attendance at courses of training accredited under section 14(1)(h),

but the entitlements for those purposes may be varied, in a way not less favourable to the safety and health representative than that prescribed in the regulations, by agreement with the employer concerned or by a determination made by the Tribunal upon a reference made to the Tribunal under this subsection by the employer, the safety and health representative, or the Commissioner.

- (3a) In subsection (3) —

“**entitlements**” means —

- (a) the time that a safety and health representative is to be permitted to take off work with pay; and
  - (b) payments to which a safety and health representative is entitled for attendance at a course of training in his or her own time.
- (4) If an employer contravenes subsection (1) or (2), the employer commits an offence.

*[Section 35 inserted by No. 43 of 1987 s. 13; amended by No. 30 of 1995 s. 27 and 47; No. 51 of 2004 s. 48, 69(1) and (2), 89 and 102(2).]*

**35A. Discrimination against safety and health representative in relation to employment**

- (1) An employer or a prospective employer must not cause disadvantage to a person for the dominant or substantial reason that the person —
- (a) is or was a safety and health representative; or
  - (b) is performing or has performed any function as a safety and health representative.

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- (2) For the purposes of subsection (1) an employer causes disadvantage to a person if the employer —
  - (a) dismisses the person from employment;
  - (b) demotes the person or fails to give the person a promotion that the person could reasonably have expected;
  - (c) detrimentally alters the person’s employment position;  
or
  - (d) detrimentally alters the person’s pay or other terms and conditions of employment.
- (3) For the purposes of subsection (1) a prospective employer causes disadvantage to a person if the prospective employer refuses to employ the person.
- (4) An employer or prospective employer that contravenes subsection (1) commits an offence.

*[Section 35A inserted by No. 51 of 2004 s. 49.]*

**35B. Discrimination against safety and health representative in relation to contract for services**

- (1) In this section —  
“**contractor**” and “**principal**” have the meanings given to those terms in section 23D(1).
- (2) Where a scheme under section 30A makes provision of the kind described in section 30B(3), a principal must not —
  - (a) terminate the engagement of a contractor; or
  - (b) subject a contractor to any other detriment,for the dominant or substantial reason that the contractor or a person employed by the contractor —
  - (c) is or was a safety and health representative; or

(d) is performing or has performed any function as a safety and health representative.

(3) A principal that contravenes subsection (2) commits an offence.  
*[Section 35B inserted by No. 51 of 2004 s. 49.]*

**35C. Claim may be referred to the Tribunal**

(1) A person may —

(a) refer to the Tribunal —

(i) a claim that the person's employer or a prospective employer has caused disadvantage to the person in contravention of section 35A; or

(ii) in the case of a contractor referred to in section 35B, a claim that the principal has contravened that section;

and

(b) request the Tribunal to make one or more of the orders provided for by section 35D.

(2) Subsection (1) applies whether or not —

(a) the employer or prospective employer has been convicted of an offence under section 35A(4); or

(b) the principal has been convicted of an offence under section 35B(3).

(3) A referral under subsection (1) may also be made on a person's behalf by an agent or legal practitioner referred to in section 31 of the *Industrial Relations Act 1979*.

(4) Section 80E(1) of the *Industrial Relations Act 1979* does not apply to a claim under subsection (1) by a Government officer within the meaning of that section.

*[Section 35C inserted by No. 51 of 2004 s. 49.]*

**35D. Remedies that may be granted**

- (1) If, on the hearing of a claim under section 35C(1)(a)(i), the Tribunal is satisfied that an employer or a prospective employer has contravened section 35A, the Tribunal may —
  - (a) in the case of an employer, order the employer —
    - (i) to reinstate the claimant if the claimant was dismissed from employment;
    - (ii) to pay to the claimant such sum of money as the Tribunal considers adequate as compensation for loss of employment or loss of earnings; or
    - (iii) both to reinstate the claimant and to pay the claimant the sum of money referred to in subparagraph (ii),  
as the Tribunal thinks fit; or
  - (b) in the case of a prospective employer, order that person to pay the claimant such sum of money as the Tribunal thinks fit.
- (2) If, on the hearing of a claim under section 35C(1)(a)(ii), the Tribunal is satisfied that a principal has contravened section 35B, the Tribunal may order the principal to pay the claimant such sum of money as the Tribunal thinks fit.
- (3) In determining a claim under section 35C(1)(a)(i) the Tribunal may make any order of the kind mentioned in section 23A(3), (4) and (5)(a) of the *Industrial Relations Act 1979* as if the claim were a claim to which section 23A of that Act applies.
- (4) In the determination of the amount of compensation for any loss of employment, loss of earnings or detriment —
  - (a) the Tribunal is to have regard to any redress the claimant has obtained under another enactment; and
  - (b) the claimant is not entitled to compensation both under this section and otherwise for the same loss of employment, loss of earnings or detriment.

*[Section 35D inserted by No. 51 of 2004 s. 49.]*

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*[Heading inserted by No. 51 of 2004 s. 50.]*

**36. Interpretation**

(1) In this Division —

**“allowed period”** means —

- (a) 3 months; or
- (b) such longer period as the Commissioner may allow on application by a consultation party;

**“consultation party”** means a person that comes within section 39C(2)(a), (b) or (c);

**“prescribed requirements”** means —

- (a) the provisions of —
  - (i) an agreement under section 39C(2); and
  - (ii) section 39C(3);
- (b) the terms of a determination of —
  - (i) the Commissioner, under section 39D; or
  - (ii) the Tribunal, under section 39G,in respect of the workplace concerned or, if any agreement under section 39E applies, any workplace concerned; and
- (c) any requirement of the regulations.

(2) In this Division references to a **“safety and health representative for the workplace”** or a **“safety and health representative for a workplace”** include a safety and health representative elected for a group of employees pursuant to a scheme under section 30A if any member of the group works at the workplace concerned.

*[Section 36 inserted by No. 51 of 2004 s. 50.]*

**37. Employees to appoint representatives**

Whenever required for the purpose of making an agreement under section 39C(2) or 39E(1) in respect of a workplace, the employees who work at the workplace are to appoint, from amongst their number, one or more employees —

- (a) to represent them for that purpose; or
- (b) as may be required, to replace any employee previously appointed under this section.

*[Section 37 inserted by No. 51 of 2004 s. 50.]*

**38. Obligation of employer to establish a safety and health committee**

- (1) An employer must, in accordance with the prescribed requirements, establish a safety and health committee for a workplace within the allowed period after —

- (a) the coming into operation of a regulation requiring the employer to do so;
- (b) service on the employer of a notice by the Commissioner requiring the employer to do so; or
- (c) being requested under section 39(1) to do so,

unless, in the case mentioned in paragraph (c), the Commissioner has decided under section 39A that a safety and health committee is not required to be established for the workplace concerned.

- (2) If an employer contravenes subsection (1), the employer commits an offence.

*[Section 38 inserted by No. 51 of 2004 s. 50.]*

**39. Request for establishment of safety and health committee**

- (1) An employee who works at a workplace may request the employer to establish a safety and health committee for the workplace.



- (2) If a request is made under subsection (1), the employer must within 21 days after the request is received either —
- (a) notify —
    - (i) the employee who made the request; and
    - (ii) any safety and health representative for the workplace,that the employer agrees to the request; or
  - (b) under section 39A, refer to the Commissioner the question whether a safety and health committee should be established for the workplace.
- (3) If an employer contravenes subsection (2), the employer commits an offence.

*[Section 39 inserted by No. 51 of 2004 s. 50.]*

**39A. Referral of question to Commissioner**

- (1) If —
- (a) a request has been made to an employer under section 39(1) in respect of a workplace; and
  - (b) the employer considers that the circumstances of the case are such that the employer should not be required to establish a safety and health committee for the workplace,
- the employer may refer to the Commissioner the question of whether a safety and health committee should be so established.
- (2) The employer must give notice of a referral under this section to —
- (a) the employee concerned; and
  - (b) any safety and health representative for the workplace.
- (3) The Commissioner is to —
- (a) decide a question referred to the Commissioner under subsection (1); and

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- (b) notify the employer and the employee concerned of the decision.

*[Section 39A inserted by No. 51 of 2004 s. 50.]*

**39B. Employer may establish a safety and health committee**

An employer may, on the employer's own initiative and in accordance with the prescribed requirements, establish a safety and health committee for a workplace if —

- (a) a regulation referred to in section 38(1)(a) has not come into operation;
- (b) a notice referred to in section 38(1)(b) has not been served on the employer; or
- (c) a request has not been made under section 39(1),

in respect of the workplace.

*[Section 39B inserted by No. 51 of 2004 s. 50.]*

**39C. How safety and health committee to be constituted**

- (1) In this section —  
“**workplace**”, where an agreement under section 39E applies, includes 2 or more workplaces.
- (2) Subject to subsection (3), the composition, and the manner in which persons become members, of a safety and health committee for a workplace are to be determined by agreement in writing between —
  - (a) the employer;
  - (b) any safety and health representative for the workplace; and
  - (c) the employees appointed under section 37 in respect of the workplace.
- (3) At least one half of the members of a safety and health committee for a workplace must be persons each of whom is —

- (a) a safety and health representative for the workplace; or
- (b) an employee who works at the workplace and holds office as a member representing other employees.

*[Section 39C inserted by No. 51 of 2004 s. 50.]*

**39D. Commissioner may make determination in certain cases**

- (1) This section applies if —
  - (a) a consultation party considers that discussions for the purpose of making an agreement under section 39C —
    - (i) cannot commence or continue because there are no employees appointed under section 37 in respect of the workplace concerned;
    - (ii) have not been commenced or continued in good faith by any party;
    - (iii) are being unreasonably delayed; or
    - (iv) have broken down;
  - or
  - (b) the employer concerned considers that for some other reason it is unlikely that the employer will be able to comply with section 38(1) within the allowed period under that section.
- (2) The employer or other consultation party may refer to the Commissioner for determination —
  - (a) the matters that are required to be settled by agreement under section 39C; or
  - (b) any particular matter mentioned in paragraph (a) on which the parties cannot agree.
- (3) On such a referral, the Commissioner is to —
  - (a) make any necessary determination; and
  - (b) notify the employer or other party concerned of the determination.

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*[Section 39D inserted by No. 51 of 2004 s. 50.]*

**39E. Functions of committee may cover more than one workplace**

- (1) If —
- (a) an employer —
    - (i) is under an obligation by operation of section 38(1); or
    - (ii) wishes to take action for the purposes of section 39B,in respect of more than one workplace of the employer;  
and
  - (b) a safety and health committee has not been established for one or more of those workplaces,

the parties concerned may agree in writing that one safety and health committee is to be established to exercise functions in relation to each of the workplaces to which paragraph (b) applies.

- (2) For the purposes of subsection (1) the parties concerned are —
- (a) the employer;
  - (b) any safety and health representative for a workplace to which subsection (1)(b) applies; and
  - (c) the employees appointed under section 37 in respect of that workplace.
- (3) An agreement under subsection (1) may provide —
- (a) for the establishment of a safety and health committee to exercise functions in relation to more than one workplace; and
  - (b) for that committee to have subcommittees for each workplace —
    - (i) to advise the committee on the exercise of its functions in relation to that workplace; and

- (ii) to exercise some or all of those functions as the delegate of the committee in accordance with the terms of a delegation to it.
- (4) The composition of any subcommittee referred to in subsection (3) is to be determined by the parties referred to in subsection (2).

*[Section 39E inserted by No. 51 of 2004 s. 50.]*

**39F. Amendment of agreement and abolition of committee**

- (1) In this section —  
“**relevant parties**”, in respect of a workplace, means —
  - (a) the employer; and
  - (b) each member for the time being of the safety and health committee for the workplace.
- (2) Where —
  - (a) an agreement has been made under section 39C(2); or
  - (b) the matters referred to in section 39C(2) are governed by provisions consisting —
    - (i) wholly of a determination made under section 39D, whether or not it has been varied or confirmed under section 39G; or
    - (ii) partly of an agreement under section 39C(2) and partly of a determination made under section 39D, whether or not it has been varied or confirmed under section 39G,

the relevant parties may by agreement in writing made between them —

- (c) vary —
  - (i) the agreement or provisions; or
  - (ii) if applicable, the agreement or provisions as previously varied under this subsection; and

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- (d) make any transitional provision that is necessary or expedient in respect of the variation.
- (3) Where a safety and health committee has been established for a workplace, the relevant parties may by agreement in writing —
  - (a) abolish the committee; and
  - (b) make any transitional provision that is necessary or expedient in respect of the abolition.
- (4) If the relevant parties cannot agree on the exercise of a power referred to in subsection (2) or (3), any such party may refer to the Commissioner for determination any question —
  - (a) whether the agreement or provisions concerned should be varied;
  - (b) as to the manner in which the agreement or provisions should be varied; or
  - (c) whether a safety and health committee should be abolished,

or as to transitional provisions that should be made in respect of such a matter.

- (5) On such a referral, the Commissioner is to —
  - (a) make any necessary determination; and
  - (b) notify the relevant parties of the determination.

*[Section 39F inserted by No. 51 of 2004 s. 50.]*

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

- (1) Where the Commissioner has made a decision under section 39A(3) in respect of a workplace —
  - (a) the employer;
  - (b) a safety and health representative for the workplace; or
  - (c) an employee who works at the workplace,may refer the decision to the Tribunal for review.

- (2) Where the Commissioner has made a determination under section 39D(3) in respect of one or more workplaces —
- (a) the employer;
  - (b) any safety and health representative for a workplace concerned; or
  - (c) an employee appointed under section 37 in respect of a workplace concerned,

may refer the determination to the Tribunal for review.

- (3) Where the Commissioner has made a determination under section 39F(5) in respect of —
- (a) an agreement; or
  - (b) a safety and health committee,

a relevant party, within the meaning in that section, in relation to the workplace concerned may refer the determination to the Tribunal for review.

- (4) The Tribunal may confirm, vary or revoke a decision or determination of the Commissioner referred to it under this section.

*[Section 39G inserted by No. 51 of 2004 s. 50.]*

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

- (1) In this section —
- “**workplace**”, where an agreement under section 39E applies to the establishment of a safety and health committee, means any workplace in relation to which the committee may exercise functions.
- (2) The functions of a safety and health committee are —
- (a) to facilitate consultation and cooperation between an employer and the employees of the employer in initiating, developing, and implementing measures designed to ensure the safety and health of employees at the workplace;

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

*[Section 40 inserted by No. 43 of 1987 s. 13; amended by No. 30 of 1995 s. 47; No. 51 of 2004 s. 52 and 90.]*

**41. Procedures**

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

*[(2) repealed]*

*[Section 41 inserted by No. 43 of 1987 s. 13; amended by No. 30 of 1995 s. 47; No. 51 of 2004 s. 53.]*



## Part V — Inspectors

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

### 41A. Extended meaning of “employer” and “employee”

In this Part —

“**employer**” and “**employee**” include a person taken to be an employer and an employee respectively by operation of section 23D, 23E or 23F.

*[Section 41A inserted by No. 51 of 2004 s. 9.]*

### 42. Appointment of inspectors

The Commissioner, by instrument in writing, is to appoint such officers of the department as the Commissioner considers necessary to be inspectors for the purposes of this Act.

*[Section 42 inserted by No. 51 of 2004 s. 58.]*

### 42A. Appointment of restricted inspectors

- (1) The Commissioner may, by instrument in writing, appoint any person employed in the Public Service under Part 3 of the *Public Sector Management Act 1994* to be a restricted inspector for —
  - (a) the State; or
  - (b) any specified area of the State,during the period specified in the instrument.
- (2) A person ceases to be a restricted inspector —
  - (a) when the period of the person’s appointment expires; or
  - (b) if the person’s appointment is revoked by the Commissioner.
- (3) A person who ceases to be a restricted inspector must, as soon as practicable, return the certificate provided to the person under section 42C to the Commissioner or to any other person authorised by the Commissioner to receive it.

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*[Section 42A inserted by No. 51 of 2004 s. 58.]*

**42B. Powers of restricted inspector**

- (1) A restricted inspector has, in respect of —
  - (a) the State; or
  - (b) the area of the State for which the restricted inspector is appointed,such of the functions of an inspector under this Act as are specified in the instrument of appointment.
- (2) The performance of a function by a restricted inspector may be made subject to any condition or limitation.
- (3) To the extent provided by the instrument of appointment, and subject to that instrument, a restricted inspector is taken to be an inspector appointed under section 42.

*[Section 42B inserted by No. 51 of 2004 s. 58.]*

**42C. Certificate of appointment**

- (1) Every inspector and restricted inspector is to be provided with a certificate of appointment signed by the Commissioner or an officer of the department authorised in that behalf by the Commissioner.
- (2) An inspector or a restricted inspector must produce the certificate to a person if —
  - (a) the inspector has performed, or is about to perform, any functions under this Act in relation to a person; and
  - (b) the person requests that the certificate be produced.
- (3) A certificate purporting to have been provided under subsection (1) is, without proof of the signature of the person purporting to have signed it or of the person's authority to have signed it, evidence in a court —
  - (a) of the appointment to which the certificate purports to relate; and

(b) of any other matter specified in the certificate.

*[Section 42C inserted by No. 51 of 2004 s. 58.]*

### **43. Powers**

- (1) An inspector may, for the purposes of this Act —
- (a) at all reasonable times of the day or night, enter, inspect and examine any workplace;
  - (b) enter any workplace at any other time that the performance of his or her functions under this Act requires such entry;
  - (c) when entering any workplace, take with him or her such equipment and materials as he or she considers appropriate;
  - (d) conduct such examination and inquiry as he or she considers necessary to ascertain whether there has been compliance with this Act;
  - (e) examine any plant, substance or other thing whatsoever at the workplace;
  - (ea) provide information to any person for the purpose of facilitating compliance with this Act;
  - (f) take and remove samples of any substance or thing, without paying for it;
  - (g) take possession of any plant or thing for further examination or testing or for use as evidence;
  - (h) take photographs and measurements, and make sketches and recordings;
  - (i) require the production of, examine, and take copies or extracts of, any document;
  - (j) require that the workplace, or any part of it, be left undisturbed for as long as is specified in the requirement;
  - (k) in accordance with subsections (1b) and (1c), interview any person who the inspector has reasonable grounds to believe —

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- (i) is, or was at any time during the preceding 3 years —
    - (I) an employee working at a workplace; or
    - (II) an employee occupying residential premises mentioned in section 39G(2),  
in relation to which the inspector is inquiring;
  - (ii) was at such a workplace or such residential premises at a time that is relevant to a matter about which the inspector is inquiring; or
  - (iii) may otherwise be able to provide information relevant to a matter about which the inspector is inquiring;
- (l) require any person whom the inspector interviews under paragraph (k) to answer any questions put to him or her and, if the inspector considers it appropriate, to verify any such answer by statutory declaration;
  - (m) require any person to state his or her name and address;
  - (n) require the employer or any person who works at a workplace to render such assistance to the inspector as the inspector considers necessary for the performance of his or her functions under this Act;
  - (o) exercise such other powers as may be conferred on him or her by the regulations or as may be necessary for the performance of his or her functions under this Act.
- (1a) In subsection (1) —  
“**workplace**” includes residential premises that an employer is or was under a duty to maintain by virtue of section 23G(2).
- (1b) An interview referred to in subsection (1)(k) is to be conducted in private if —
- (a) the inspector considers that to be appropriate; or
  - (b) the person to be interviewed so requests,

but this subsection does not limit the operation of subsection (2) or section 44.

- (1c) Subsection (1b) may be invoked during an interview by —
- (a) the inspector; or
  - (b) the person being interviewed,

in which case that subsection applies to the remainder of the interview.

- (2) In exercising any of his or her powers under this Act an inspector may be accompanied by any other person whose assistance the inspector considers necessary, and that person may do such things as are necessary to assist the inspector in the performance of his or her functions, and any thing so done shall be deemed to have been done by the inspector.
- (3) In carrying out the functions of an inspector under this Act, an inspector shall act in such a manner as to avoid unduly or unreasonably interfering with any work or work process or affecting adversely a covert operation within the meaning of section 4A(1).

*[Section 43 inserted by No. 43 of 1987 s. 13; amended by No. 30 of 1995 s. 32; No. 54 of 2002 s. 7; No. 51 of 2004 s. 10, 59, 91, 102.]*

#### **44. Interpreters**

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

*[Section 44 inserted by No. 43 of 1987 s. 13; amended by No. 51 of 2004 s. 102(1) and (2).]*

**45.        Notification by inspector**

(1) In this section —

“**relevant**” —

(a) in relation to an employer, means an employer whose employees —

(i) carry out, in a workplace, work of a kind; or

(ii) carry out work, or are likely to be, in an area of a workplace,

that is relevant to any purpose for which an inspector has entered the workplace; and

(b) in relation to —

(i) a safety and health representative; or

(ii) a safety and health committee,

means a representative or committee that has functions that are relevant to any purpose referred to in paragraph (a).

(2) On entering a workplace an inspector shall, as soon as is practicable, take all reasonable steps to notify any relevant employer of the inspector’s presence.

(2a) An employer, upon being notified of the presence of an inspector at a workplace shall, as soon as is practicable, notify any relevant safety and health representative of the presence.

(3) Upon completing an inspection of a workplace, an inspector shall notify any relevant employer and any relevant safety and health representative or safety and health committee of any action he or she has taken and any further action he or she requires to be taken under this Act in relation to the workplace as a result of the inspection.

(4) Where an inspector takes any photograph or makes any sketch or recording of, or in respect of, a workplace he or she shall

forthwith notify any relevant employer and any relevant safety and health representative of —

- (a) the fact that he or she has taken the photograph or made the sketch or recording, as the case may be; and
  - (b) the time and place at which the photograph, sketch or recording may be inspected.
- (5) If an employer contravenes subsection (2a), the employer commits an offence.

*[Section 45 inserted by No. 43 of 1987 s. 13; amended by No. 30 of 1995 s. 47; No. 51 of 2004 s. 60, 92 and 102(1).]*

**46. Samples**

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

*[Section 46 inserted by No. 43 of 1987 s. 13; amended by No. 30 of 1995 s. 33 and 47; No. 51 of 2004 s. 102(1).]*

**47.        Offences**

(1) If a person —

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

the person commits an offence.

(2) A person is not excused from complying with a requirement under this Act to —

- (a) answer a question;
- (b) provide information; or
- (c) produce a document,

on the ground that to do so might tend to incriminate the person or make the person liable to a penalty.

(3) However —

- (a) an answer given or information provided by a person when so required; or



- (b) the fact that a document produced by the person to comply with the requirement was produced,

is not admissible in evidence against the person in any civil or criminal proceedings other than proceedings for perjury or for an offence under this Act arising out of the false or misleading nature of the answer, information or document.

- (4) Subsection (3) does not apply —

- (a) to —

- (i) information in a document produced in compliance with a requirement under section 43(1)(i); or

- (ii) the fact that such a document was produced;

or

- (b) to —

- (i) an answer given or information provided; or

- (ii) the fact that a document was produced,

by or on behalf of a body corporate.

*[Section 47 inserted by No. 43 of 1987 s. 13; amended by No. 30 of 1995 s. 34; No. 51 of 2004 s. 61, 93 and 102(2).]*

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

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

### **Division 1 — Issue of notices by inspector**

*[Heading inserted by No. 51 of 2004 s. 54.]*

#### **47A. Extended meaning of “employer” and “employee”**

In this Part —

“**employer**” and “**employee**” include a person taken to be an employer and an employee respectively by operation of section 23D, 23E or 23F.

*[Section 47A inserted by No. 51 of 2004 s. 11.]*

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

(1) Where an inspector is of the opinion that any person —

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

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

(2) An improvement notice shall —

- (a) state that the inspector is of the opinion that the person —
  - (i) is contravening a provision of this Act; or
  - (ii) has contravened a provision of this Act in circumstances that make it likely that the contravention will continue or be repeated;
- (b) state reasonable grounds for forming that opinion;

- (c) specify the provision of this Act in respect of which that opinion is held;
  - (d) specify the time before which the person is required, to remedy the contravention or likely contravention or the matters or activities occasioning the contravention or likely contravention; and
  - (e) contain a brief summary of how the right to have the notice reviewed, given by sections 51 and 51A, may be exercised.
- (3) A person, other than the employer, issued with an improvement notice shall forthwith give the notice, or a copy of it, to the employer, and where —
- (a) under subsection (1), an improvement notice is issued to an employer; or
  - (b) under this subsection an improvement notice, or a copy thereof, is given to an employer,

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

- (3a) A person shall not remove an improvement notice displayed under subsection (3) before the requirements of that improvement notice have been satisfied.
- (3b) Subsection (3a) does not apply in respect of an improvement notice that is suspended under section 51 or 51A or that has ceased to have effect.
- (3c) If an improvement notice is issued —
  - (a) to a self-employed person in respect of a contravention of section 21; or
  - (b) to a body corporate to which section 21B applies in respect of a contravention of that section,

the person or body shall comply with subsection (3) and (3d) as if the person or body were an employer.

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- (3d) If an improvement notice is modified by the Commissioner under section 51(5)(b), the employer shall cause a copy of the Commissioner's decision to be displayed with the improvement notice, or a copy of it, as required by subsection (3).
- (4) Subject to sections 51 and 51A, if a person —
- (a) is issued with an improvement notice; and
  - (b) does not comply with the notice within the time specified in it,
- the person commits an offence.
- (5) A person issued with an improvement notice commits an offence if the Commissioner is not notified forthwith upon the requirements of the improvement notice being satisfied.
- (6) If a person contravenes subsection (3), (3a), (3c) or (3d), the person commits an offence.

*[Section 48 inserted by No. 43 of 1987 s. 13; amended by No. 30 of 1995 s. 35; No. 51 of 2004 s. 94 and 107.]*

**49. Inspectors may issue prohibition notices**

- (1) Where an inspector is of the opinion that an activity is occurring or may occur at a workplace which activity involves or will involve a risk of imminent and serious injury to, or imminent and serious harm to the health of, any person, the inspector may issue to a person that is or will be carrying on the activity, or a person that has or may be reasonably presumed to have control over the activity, a prohibition notice prohibiting the carrying on of the activity until an inspector is satisfied that the matters which give or will give rise to the risk are remedied.
- (2) An inspector who issues a prohibition notice, other than in respect of an activity as defined in subsection (7), shall remain at the workplace until the employer has been advised of the notice and, where the notice is in respect of an activity that is occurring, the prohibited activity has ceased.

- (3) A prohibition notice shall —
- (a) state that the inspector is of the opinion that in the workplace there is occurring or may occur an activity which involves or will involve a risk of imminent and serious injury to, or imminent and serious harm to the health of, a person;
  - (b) state reasonable grounds for forming that opinion;
  - (c) specify the activity which in the inspector's opinion involves or will involve the risk and the matters which give or will give rise to the risk;
  - (d) where in the inspector's opinion the activity involves a contravention or likely contravention of any provision of this Act, specify that provision and state the reasons for that opinion; and
  - (e) contain a brief summary of how the right to have the notice reviewed, given by sections 51 and 51A, may be exercised.
- (4) A person, other than the employer, to whom a prohibition notice is issued shall forthwith give the notice, or a copy of it, to the employer, and where —
- (a) under subsection (1), a prohibition notice is issued to an employer; or
  - (b) under this subsection a prohibition notice, or a copy thereof, is given to an employer,
- the employer shall cause the notice, or a copy of it, to be displayed in a prominent place at or near any workplace affected by the notice.
- (4a) A person shall not remove a prohibition notice displayed under subsection (4) before the requirements of that prohibition notice, taking into account any modifications made under section 51(5), have been satisfied or the prohibition notice has ceased to have effect.

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- (4b) If a prohibition notice is issued —
- (a) to a self-employed person in respect of a contravention of section 21; or
  - (b) to a body corporate to which section 21B applies in respect of a contravention of that section,
- the person or body shall comply with subsection (4) and (4c) as if the person or body were an employer.
- (4c) If a prohibition notice is modified by the Commissioner under section 51(5)(b), the employer shall cause a copy of the Commissioner’s decision to be displayed with the prohibition notice, or a copy of it, as required by subsection (4).
- (5) Subject to sections 51 and 51A, if a person issued with a prohibition notice does not comply with the notice, the person commits an offence.
- (6) If a person contravenes subsection (4), (4a), (4b) or (4c), the person commits an offence.
- (7) The application of this section extends to residential premises that are being or may be occupied by an employee as mentioned in section 23G(2), and for that purpose —
- (a) in this section —
    - (i) **“workplace”** includes such premises; and
    - (ii) references to imminent and serious injury to, or imminent and serious harm to the health of, a person are to be read as applying only to an employee;
- and
- (b) in this section and section 50 **“activity”** includes the occupation of such premises.

*[Section 49 inserted by No. 43 of 1987 s. 13; amended by No. 30 of 1995 s. 36; No. 51 of 2004 s. 12, 95 and 108.]*

**50. Notices may include directions**

- (1) An inspector may include in an improvement notice or a prohibition notice directions as to the measures to be taken to remedy any contravention, likely contravention, risk, matters or activities to which the notice relates.
- (2) Any direction under subsection (1) may —
  - (a) refer to any code of practice; and
  - (b) offer the person issued with the notice a choice of ways in which to remedy the contravention, likely contravention, risk, matters or activities.

*[Section 50 inserted by No. 43 of 1987 s. 13; amended by No. 51 of 2004 s. 96.]*

**50A. Notices may be issued to the Crown**

- (1) An improvement notice and a provisional improvement notice may be issued in respect of a contravention of this Act by the Crown in any of its capacities.
- (2) A prohibition notice may be issued in respect of an activity of or controlled by the Crown in any of its capacities.
- (3) If the contravention or activity relates to a body corporate that is an agent of the Crown, the notice is to be issued to the body corporate.
- (4) In the case of any other contravention or activity that relates to the Crown, the notice —
  - (a) is to be issued to the Crown under the title “State of Western Australia”; and
  - (b) is to show the name of the responsible agency under Part VII Division 2 that would be specified in a charge for an offence in respect of that contravention or activity.

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- (5) It is sufficient for the purposes of subsection (3) or (4) if the notice —
- (a) is delivered to a person at the workplace concerned who has, or reasonably appears to have, responsibility for the management or control of the workplace; or
  - (b) is sent by pre-paid letter addressed and posted to the body corporate or responsible agency concerned at its principal place of business in the State.
- (6) If a notice is delivered to a person as mentioned in subsection (5)(a) the person must, as soon as is practicable, give a copy of the notice to the executive who is responsible for the day to day administration of the body corporate or responsible agency concerned.

*[Section 50A inserted by No. 51 of 2004 s. 109.]*

**51. Review of notices**

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

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



- (5) On the reference under this section of an improvement notice or a prohibition notice for review, the Commissioner shall inquire into the circumstances relating to the notice and may —
- (a) affirm the notice;
  - (b) affirm the notice with such modifications as seem appropriate; or
  - (c) cancel the notice,
- and, subject to section 51A, the notice shall have effect or, as the case may be, cease to have effect, accordingly.
- (6) The Commissioner shall give to the person that referred the matter for review, and to any other person that was entitled under subsection (1) to refer the notice for review, a notice in writing of the decision on the reference and of the reasons for that decision.
- (6a) In dealing with a reference for the review of a prohibition notice the Commissioner may refer to an expert chosen by the Commissioner such matters as appear appropriate and may accept the advice of that expert.
- (7) Pending the decision on a reference under this section for the review of a notice, the operation of the notice shall —
- (a) in the case of an improvement notice, be suspended; and
  - (b) in the case of a prohibition notice, continue, subject to any decision to the contrary made by the Commissioner.

*[Section 51 inserted by No. 43 of 1987 s. 13; amended by No. 30 of 1995 s. 37; No. 51 of 2004 s. 97 and 103.]*

**51AA. Further power of Commissioner to cancel notice**

- (1) The Commissioner, on his or her own initiative, may cancel an improvement notice or a prohibition notice by giving notice in writing of the cancellation, and the reasons for it —
- (a) to the person issued with the notice; and

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- (b) if that person is an employee, to the employee's employer.
- (2) The power conferred by subsection (1) is not to be exercised in respect of a notice —
  - (a) during a period when a referral of the notice under section 51 is awaiting a determination of the Commissioner under that section; or
  - (b) after a decision in respect of the notice has been referred to the Tribunal under section 51A,

but may be exercised at any other time and whether or not the notice has been affirmed under section 51(5)(a) or (b).

*[Section 51AA inserted by No. 51 of 2004 s. 110.]*

**51A. Further review of notices**

- (1) A person issued with notice of a decision under section 51(6) may, if not satisfied with the Commissioner's decision, refer the matter in accordance with subsection (2) to the Tribunal for further review.
- (2) A reference under subsection (1) may be made in the prescribed form within 7 days of the issue of the notice under section 51(6).
- (3) A review of a decision made under section 51 shall be in the nature of a rehearing.
- (4) The Tribunal shall act as quickly as is practicable in determining a matter referred under this section.
- (5) On a reference under subsection (1) the Tribunal shall inquire into the circumstances relating to the notice and may —
  - (a) affirm the decision of the Commissioner;
  - (b) affirm the decision of the Commissioner with such modifications as seem appropriate; or
  - (c) revoke the decision of the Commissioner and make such other decision with respect to the notice as seems fit,

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

*[(6) repealed]*

- (7) Pending the decision on a reference under this section, irrespective of the decision of the Commissioner under section 51, the operation of the notice in respect of which the reference is made shall —
- (a) in the case of an improvement notice, be suspended; and
  - (b) in the case of a prohibition notice, continue, subject to any decision to the contrary made by the Tribunal.

*[Section 51A inserted by No. 30 of 1995 s. 38; amended by No. 51 of 2004 s. 64, 69(1)-(3) and 98.]*

## **Division 2 — Issue of provisional improvement notices by safety and health representative**

*[Heading inserted by No. 51 of 2004 s. 55.]*

### **51AB. Definition**

In this Division —

**“qualified representative”** means a safety and health representative who has completed a course of training prescribed for the purposes of this definition.

*[Section 51AB inserted by No. 51 of 2004 s. 55.]*

### **51AC. Issue of provisional improvement notices**

- (1) Subsection (2) applies where a qualified representative —
- (a) is of the opinion that a person —
    - (i) is contravening a provision of this Act; or
    - (ii) has contravened a provision of this Act in circumstances that make it likely that the contravention will continue or be repeated;
- and

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- (b) has undertaken the consultations required by section 51AD.
- (2) The qualified representative may issue to the person a provisional improvement notice requiring the person to remedy —
  - (a) the contravention or likely contravention; or
  - (b) the matters or activities occasioning the contravention or likely contravention.
- (3) A qualified representative may exercise the power conferred by subsection (2) only —
  - (a) in respect of a workplace for which the qualified representative was elected; or
  - (b) if, pursuant to a scheme under section 30A, the qualified representative was elected for a group of employees, in respect of any workplace at which any member of the group works.
- (4) If a provisional improvement notice is issued to an employee, the employee must, as soon as is practicable, give a copy of the notice to the employee's employer.

*[Section 51AC inserted by No. 51 of 2004 s. 55.]*

**51AD. Consultation required before issue**

- (1) In this section —  
**“consult”** means consult about the matters or activities to which an intended notice will relate.
- (2) Before issuing a provisional improvement notice a qualified representative must —
  - (a) consult with the person that is to be issued with the notice; and
  - (b) if there is any other safety and health representative for the workplace concerned, consult with another

representative for that workplace so far as it is reasonably practicable to do so.

- (3) The reference in subsection (2) to a safety and health representative includes a safety and health representative elected for a group of employees pursuant to a scheme under section 30A if any member of the group works at the workplace concerned.
- (4) The regulations may make provision requiring a qualified representative, in specified circumstances, to consult with a person who holds a prescribed office in the department before issuing a provisional improvement notice.

*[Section 51AD inserted by No. 51 of 2004 s. 55.]*

**51AE. Contents of notice**

- (1) A provisional improvement notice must —
    - (a) state that the qualified representative is of the opinion that the person —
      - (i) is contravening a provision of this Act; or
      - (ii) has contravened a provision of this Act in circumstances that make it likely that the contravention will continue or be repeated;
    - (b) state reasonable grounds for the representative being of that opinion;
    - (c) specify the provision of this Act in respect of which the opinion is held;
    - (d) specify the day before which the person is required to remedy —
      - (i) the contravention or likely contravention; or
      - (ii) the matters or activities occasioning the contravention or likely contravention;
- and

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- (e) contain a brief summary of the right to have the notice reviewed by an inspector under section 51AH.
- (2) The day specified for the purposes of subsection (1)(d) must be more than 7 days after the day on which the notice is issued.

*[Section 51AE inserted by No. 51 of 2004 s. 55.]*

**51AF. Provisional notices may include directions**

- (1) A qualified representative may include in a provisional improvement notice directions as to the measures to be taken to remedy —
  - (a) any contravention or likely contravention; or
  - (b) matters or activities,to which the notice relates.
- (2) Any direction under subsection (1) may —
  - (a) refer to any code of practice; and
  - (b) offer the person issued with the notice a choice of ways in which to effect the remedy.

*[Section 51AF inserted by No. 51 of 2004 s. 55.]*

**51AG. Failure to comply with notice**

- (1) A person commits an offence if the person fails to comply with a provisional improvement notice issued to the person.
- (2) Subsection (1) does not apply if the right conferred by section 51AH(2) is exercised.

*[Section 51AG inserted by No. 51 of 2004 s. 55.]*

**51AH. Review of notice by an inspector**

- (1) In this section —  
**“affected person”** means —
  - (a) the person issued with a provisional improvement notice; or

- (b) in the case of a notice issued to an employee —
  - (i) the employee; and
  - (ii) the employer of the employee.
- (2) An affected person may, in writing delivered or sent to the department (a “**review notice**”), require that an inspector review a provisional improvement notice.
- (3) A review notice —
  - (a) may be sent —
    - (i) by letter addressed to, and posted to a place of business of, the department;
    - (ii) by transmission to a facsimile number used by the department; or
    - (iii) by electronic data transmission to an email address used by the department;
  - and
  - (b) must be received by the department not later than the day specified in the provisional improvement notice for the purposes of section 51AE(1)(d).
- (4) The operation of the provisional improvement notice is suspended by the receipt by the department of a review notice in accordance with this section.
- (5) Where a review notice is received by the department in accordance with this section, an inspector must as soon as is practicable —
  - (a) attend at the workplace; and
  - (b) inquire into the circumstances relating to the notice,and having done so may —
  - (c) affirm the notice;
  - (d) affirm the notice with modifications; or
  - (e) cancel the notice.

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- (6) If an inspector affirms a provisional improvement notice, with or without modifications, the notice as so affirmed has effect as if it had been issued by the inspector under section 48.

*[Section 51AH inserted by No. 51 of 2004 s. 55.]*



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

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

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

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

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

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

- (1) A safety and health magistrate has jurisdiction to —
  - (a) hear and determine any matter referred to a safety and health magistrate under this Act; and
  - (b) hear and determine under the *Criminal Procedure Act 2004* proceedings instituted under section 52, subject to section 19(1) of the *Children's Court of Western Australia Act 1988*.
- (2) A decision by a safety and health magistrate on a matter referred under this Act has effect according to its substance.
- (3) Except as otherwise prescribed by or under this Act —
  - (a) the powers of a safety and health magistrate; and
  - (b) the practice and procedure to be observed by a safety and health magistrate,

when exercising jurisdiction under subsection (1)(a) are those provided for by the *Magistrates Court (Civil Proceedings) Act 2004* and when exercising that jurisdiction a safety and health magistrate is taken to be the Magistrates Court.
- (4) If, in relation to a matter referred to a safety and health magistrate under this Act, no provision of the *Magistrates Court (Civil Proceedings) Act 2004* or this Act is applicable the matter shall be dealt with in such manner as the safety and health magistrate may direct.

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- (5) When exercising jurisdiction under subsection (1)(b) a safety and health magistrate constitutes a court of summary jurisdiction.
- (6) Sections 15, 16, 35 and 36 and Part 3 Division 2 of the *Magistrates Court Act 2004* apply to and in relation to a safety and health magistrate in the same way as they apply to and in relation to the Magistrates Court and its officers.

*[Section 51C inserted by No. 30 of 1995 s. 39; amended by No. 59 of 2004 s. 141; No. 84 of 2004 s. 78.]*

**51D. Representation**

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

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

**51E. Administrative arrangements**

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

*[Section 51E inserted by No. 30 of 1995 s. 39; amended by No. 59 of 2004 s. 141.]*

## **Part VIB — Occupational Safety and Health Tribunal**

*[Heading inserted by No. 51 of 2004 s. 67.]*

### **51F. Interpretation**

In this Part —

“**Commission**” and “**Chief Commissioner**” have the meanings given to those terms in section 7(1) of the *Industrial Relations Act 1979*;

“**matter**” includes a claim under section 35C.

*[Section 51F inserted by No. 51 of 2004 s. 67.]*

### **51G. Industrial Relations Commission sitting as the Occupational Safety and Health Tribunal**

- (1) By this subsection the Commission has jurisdiction to hear and determine matters that may be referred for determination under sections 28(2), 30(6), 30A(4), 31(11), 34(1), 35(3), 35C, 39G(1), (2) and (3) and 51A(1).
- (2) When sitting in exercise of the jurisdiction conferred by subsection (1) the Commission is to be known as the Occupational Safety and Health Tribunal (the “**Tribunal**”).
- (3) A determination of the Tribunal on a matter mentioned in subsection (1) has effect according to its substance and an order containing the determination is an instrument to which section 83 of the *Industrial Relations Act 1979* applies.

*[Section 51G inserted by No. 51 of 2004 s. 67.]*

### **51H. Jurisdiction to be exercised by Commissioner with requisite qualifications**

- (1) The jurisdiction conferred by section 51G in respect of any matter is to be exercised —
  - (a) by the Commissioner appointed for the purposes of section 8(2a) of the *Industrial Relations Act 1979*; or

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- (b) if that Commissioner is unable to act by reason of sickness, absence or other cause —
  - (i) by another Commissioner; or
  - (ii) an Acting Commissioner appointed under section 17 of the *Industrial Relations Act 1979*, to whom the Chief Commissioner may allocate the matter under section 16 of that Act.
- (2) In allocating a matter for the purposes of subsection (1)(b) the Chief Commissioner is to have regard to the desirability of the Commissioner concerned having relevant knowledge in the field of occupational safety and health.
- (3) A Commissioner to whom a matter has been allocated under subsection (1)(b) may continue and complete the hearing and determination of part-heard proceedings after the Commissioner referred to in subsection (1)(a) has resumed his or her duties.  
*[Section 51H inserted by No. 51 of 2004 s. 67.]*

**51I. Practice, procedure and appeals**

- (1) The provisions of sections 22B, 26(1), (2) and (3), 27, 28, 31(1), (2), (3), (5) and (6), 33, 34(1), (3) and (4), 36 and 49 of the *Industrial Relations Act 1979* that apply to and in relation to the exercise of the jurisdiction of the Commission constituted by a Commissioner apply to the exercise of the jurisdiction conferred by section 51G —
  - (a) with such modifications as are prescribed under section 113 of that Act; and
  - (b) with such other modifications as may be necessary or appropriate.
- (2) For the purposes of subsection (1), section 31(1) of the *Industrial Relations Act 1979* applies as if paragraph (c) were deleted and the following paragraph were inserted instead —

“

(c) by a legal practitioner.

”

*[Section 51I inserted by No. 51 of 2004 s. 67.]*

**51J. Conciliation**

- (1) This section applies where a matter has been referred to the Tribunal for determination under section 28(2), 30(6), 30A(4), 31(11), 35(3) or 39G.
- (2) If the Tribunal considers that the issues involved may be resolved by conciliation —
  - (a) the Tribunal may endeavour to assist the parties to reach an agreement on those issues; and
  - (b) for that purpose the Tribunal may —
    - (i) arrange conferences of the parties or their representatives presided over by the Tribunal;
    - (ii) arrange for the parties or their representatives to confer among themselves at a conference at which the Tribunal is not present; and
    - (iii) otherwise encourage the parties to exchange or divulge attitudes or information that in the opinion of the Tribunal would assist in the resolution of the issues.
- (3) The Tribunal may give any direction or make any order or declaration that the Tribunal thinks expedient for the purposes of this section, and any such direction, order or declaration is enforceable as if it were given or made under section 32 of the *Industrial Relations Act 1979*.
- (4) If the Tribunal gives or makes a direction, order or declaration under subsection (3) the Tribunal must —
  - (a) if it is given or made orally, reduce the direction, order or declaration to writing as soon as is practicable; and

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(b) make the text of the direction, order or declaration available to the parties as soon as is practicable after it is given or made.

(5) If the Tribunal —

(a) takes action under subsection (2)(a); and

(b) is satisfied that the parties have reached agreement on all of the issues involved,

the Tribunal may, with the consent of the parties, make a determination for the purposes of section 51G in terms of that agreement.

(6) If the Tribunal —

(a) takes action under subsection (2)(a); and

(b) subsection (5)(b) does not apply,

the Tribunal is to determine the matter for the purposes of section 51G.

(7) In making a determination mentioned in subsection (6) the Tribunal is to endeavour to ensure that the matter is resolved —

(a) taking into account any agreement reached by the parties on any particular issue; and

(b) subject to paragraph (a), on terms that could reasonably have been agreed between the parties in the first instance or by conciliation.

*[Section 51J inserted by No. 51 of 2004 s. 67.]*

**51K. Certain matters to be heard together**

(1) The section applies if —

(a) under the *Industrial Relations Act 1979*, an employee has referred to the Commission a claim that the employee has been harshly, oppressively or unfairly dismissed from employment; and

(b) a matter —

- (i) involving the same employer and employee; and
  - (ii) arising out of the same circumstances,
- has been referred for determination under the jurisdiction conferred by section 51G.
- (2) An employee referred to in subsection (1) may in writing request that a matter referred to in subsection (1)(a) be heard and determined by the Commissioner who is hearing and determining the matter referred to in subsection (1)(b).
  - (3) If such a request is made, the Chief Commissioner, in exercising the powers conferred by section 16 of the *Industrial Relations Act 1979*, is to allocate the hearing and determination of the matter accordingly.
  - (4) If —
    - (a) an employee has referred to the Commission a claim of the kind described in section 29(1)(b)(ii) of the *Industrial Relations Act 1979*; and
    - (b) the claim involves the same employer and arises out of the same circumstances as a matter that has been referred for determination under the jurisdiction conferred by section 51G,

nothing in this section prevents the Chief Commissioner exercising the powers conferred by section 16 of that Act so that the claim is heard and determined by the Commissioner who is hearing and determining the matter referred to in paragraph (b).

*[Section 51K inserted by No. 51 of 2004 s. 67.]*

## **Part VII — Legal proceedings**

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

### **Division 1 — General provisions**

*[Heading inserted by No. 51 of 2004 s. 30.]*

#### **52. Prosecutions**

- (1) Proceedings for an offence against this Act may be instituted by any person authorised in that behalf by the Commissioner.
- (2) Subject to section 19(1) of the *Children's Court of Western Australia Act 1988*, proceedings for an offence against this Act shall be heard and determined by a safety and health magistrate.
- (3) Proceedings for an offence against this Act may be commenced at any time within 3 years after the offence was committed.

*[Section 52 inserted by No. 43 of 1987 s. 13; amended by No. 30 of 1995 s. 40; No. 63 of 1998 s. 5(1); No. 59 of 2004 s. 141.]*

#### **53. Evidentiary provisions**

- (1) In proceedings for an offence against this Act an averment in the charge that at a particular time —
  - (a) a particular place was a workplace;
  - (b) a particular person was an employer;
  - (ba) a particular person was an employer of particular persons;
  - (bb) a particular person was an employer at a particular workplace;
  - (c) a particular person had —
    - (i) control of a particular workplace; or
    - (ii) control of the means of access to or egress from a particular workplace;



- (d) a notice required under this Act to be given had not been given;
- (e) a prescribed fee had not been paid;
- (f) a particular person was an inspector or a restricted inspector under section 42A,

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

- (2) The person commencing a prosecution for an offence against this Act is taken to be authorised under section 52(1) to commence the prosecution, in the absence of evidence to the contrary.
- (3) In proceedings for an offence against this Act, production of a copy of —
  - (a) a code of practice;
  - (b) an Australian Standard; or
  - (c) an Australian/New Zealand Standard,

purporting to be certified by the Commissioner to be a true copy as at any date or during any period is, without proof of the signature of the Commissioner, sufficient evidence of the contents of the code of practice or Standard as at that date or during that period.

*[Section 53 inserted by No. 43 of 1987 s. 13; amended by No. 30 of 1995 s. 41; No. 10 of 1998 s. 56; No. 51 of 2004 s. 111; No. 84 of 2004 s. 80.]*

#### **54. General penalty**

If a person commits an offence against this Act for which a penalty is not otherwise provided, the person is liable to a level one penalty.

*[Section 54 inserted by No. 51 of 2004 s. 31.]*

*[54AA. Repealed by No. 51 of 2004 s. 32.]*

**54A. Continuing offences**

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

for every day on which the offence is so continued.

*[Section 54A inserted by No. 30 of 1995 s. 42; amended by No. 51 of 2004 s. 33 and 103.]*

**54B. Appeals**

- (1) Part 2 of the *Criminal Appeals Act 2004* applies in respect of decisions of a safety and health magistrate made under section 52.
- (2) A party to proceedings before a safety and health magistrate, other than proceedings referred to in section 52, may, by leave of the Supreme Court, appeal to the Supreme Court on a question of law against a determination or decision of the safety and health magistrate.
- (3) An appeal or an application for leave to appeal to the Supreme Court under subsection (2) shall be brought in the manner and in

the time prescribed by rules made by the Supreme Court and shall be heard and determined by a single judge of the Supreme Court.

- (4) Without limiting the rules of the Supreme Court, where an appeal under subsection (2) has commenced, the court —
- (a) may suspend the operation or effect of the determination or decision appealed against until the appeal is determined or is withdrawn; and
  - (b) may revoke any such suspension.

*[Section 54B inserted by No. 30 of 1995 s. 42; amended by No. 59 of 2004 s. 141; No. 84 of 2004 s. 78.]*

## **55. Offences by bodies corporate**

- (1) Where a body corporate is guilty of an offence under this Act and it is proved that the offence occurred with the consent or connivance of, or was attributable to any neglect on the part of, any director, manager, secretary or other officer of the body, or any person who was purporting to act in any such capacity he or she, as well as the body corporate, is guilty of that offence.
- (1a) Despite subsection (1), if a body corporate is guilty of an offence under section 19A(1), 21A(1), 21C(1), 22A(1), 23AA(1), 23B(1) or 23H(1) the following provisions apply —
- (a) a person referred to in subsection (1) is guilty of that offence if it is proved that —
    - (i) the offence was attributable to any neglect on the part of the person; or
    - (ii) the person consented to or connived in the acts or omissions to which section 18A(2)(a)(ii) applied that were proved against the body corporate, in circumstances where the person —
    - (iii) knew that the contravention would be likely to cause the death of, or serious harm to, a person to whom a duty was owed; but

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- (iv) acted or failed to act as mentioned in subparagraph (i) or (ii) in disregard of that likelihood;
- (b) if paragraph (a) does not apply, a person referred to in subsection (1) is guilty of an offence under section 19A(2), 21A(2), 21C(2), 22A(2), 23AA(2), 23B(2) or 23H(2), as the case may require, if it is proved that the offence of the body corporate —
  - (i) occurred with the consent or connivance of the person; or
  - (ii) was attributable to any neglect on the part of the person.
- (1b) A person convicted of an offence by virtue of subsection (1) or (1a) is liable to the penalty to which an individual who is convicted of that offence is liable.
- (2) Where the affairs of a body corporate are managed by its members, subsections (1) and (1a) shall apply in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director of the body corporate.

*[Section 55 inserted by No. 43 of 1987 s. 13; amended by No. 51 of 2004 s. 34, 102(1) and (2).]*

**55A. No double jeopardy**

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

*[Section 55A inserted by No. 51 of 2004 s. 35.]*

**Division 2 — Criminal proceedings against the Crown**

*[Heading inserted by No. 51 of 2004 s. 36.]*

**55B. Crown may be prosecuted**

The Crown in any capacity may, in accordance with this Division, be prosecuted for an offence against this Act.

*[Section 55B inserted by No. 51 of 2004 s. 36.]*

**55C. Prosecution against body corporate**

- (1) Where the act or omission constituting the offence is alleged against a body corporate that is an agent of the Crown, the prosecution proceedings are to be taken against the body corporate.
- (2) Subsection (1) includes a case where —
  - (a) a body corporate is the successor in law, as defined in section 55F(1), of an agency or department; or
  - (b) a body corporate is determined under section 55F(3).

*[Section 55C inserted by No. 51 of 2004 s. 36.]*

**55D. Prosecution in other cases**

- (1) Where —
  - (a) the act or omission constituting the offence is alleged against an agency or department that is an agent of the Crown (the “**responsible agency**”); and
  - (b) section 55C does not apply,the prosecution proceedings are to be taken against the Crown.
- (2) For the purposes of subsection (1) the WA Police is to be treated as an agency of the Crown.
- (3) Proceedings referred to in subsection (1) may be brought against the Crown under the title “State of Western Australia”.

*[Section 55D inserted by No. 51 of 2004 s. 36.]*

**55E. Provisions applicable to responsible agency**

- (1) In this section —
- “**chief executive**” means the person who is for the time being responsible for the day to day administration of a responsible agency;
- “**prosecution proceedings**” means proceedings referred to in section 55D(1).
- (2) For the purposes of prosecution proceedings —
- (a) the responsible agency —
- (i) is to be specified in the charge for the offence;
  - (ii) is entitled to act for the Crown in the proceedings; and
  - (iii) subject to any rules of court, has the procedural rights and obligations of the Crown as the defendant in the proceedings;
- and
- (b) the complainant may during the proceedings, with the leave of the court, substitute another responsible agency for the agency in the proceedings.
- (3) In prosecution proceedings a person authorised by the chief executive of the responsible agency concerned may act on behalf of the agency, and it is not necessary for proof to be given of the authority of the person to do so.
- (4) It is sufficient service of a document required to be served on a responsible agency for the purposes of prosecution proceedings if the document —
- (a) is delivered to a person who is or appears to be the chief executive of the responsible agency, or a person acting as such, at a place of business of the responsible agency;
- or

- (b) is sent by pre-paid letter addressed and posted to the responsible agency at its principal place of business in the State.

*[Section 55E inserted by No. 51 of 2004 s. 36.]*

**55F. Proceedings where agency has ceased to exist**

- (1) In this section —  
“**successor in law**”, in relation to an agency or department, means —
  - (a) the sole successor; or
  - (b) if there is more than one successor, the one that has the relevant functions formerly vested in the agency or department.
- (2) If an agency or department referred to in section 55D(1)(a) —
  - (a) has ceased to exist; but
  - (b) has a successor in law to which section 55C(2) does not apply,  
  
the successor in law is the responsible agency for the purposes of section 55D(1).
- (3) If an agency or department referred to in section 55D(1)(a) —
  - (a) has ceased to exist; and
  - (b) either —
    - (i) it has no apparent successor in law; or
    - (ii) there is doubt as to which agency or department has the relevant functions,  
  
the responsible agency for the purposes of that section is such agency of the Crown as the Minister determines.

*[Section 55F inserted by No. 51 of 2004 s. 36.]*

**55G. Penalties in proceedings against the Crown**

- (1) In subsection (3)(b) —  
“**successor in law**”, in relation to an agency or department,  
means —
  - (a) the successor in law as defined in section 55F(1); or
  - (b) the agency of the Crown determined under section 55F(3).
- (2) The penalty that may be imposed on the Crown if it is convicted of an offence against this Act in proceedings referred to in section 55D(1) is the penalty applicable to a body corporate.
- (3) In proceedings referred to in section 55D(1), a higher penalty may be imposed for an offence involving a responsible agency on the ground that it is a subsequent offence, only if the acts or omissions constituting the previous offence or offences were those of —
  - (a) the same responsible agency; or
  - (b) a responsible agency of which it is the successor in law.
- (4) A penalty imposed in proceedings referred to in section 55D(1) cannot be enforced under the *Fines, Penalties and Infringement Notices Enforcement Act 1994*.

*[Section 55G inserted by No. 51 of 2004 s. 36.]*

**Division 3 — Undertaking by offender in lieu of payment of fine**

*[Heading inserted by No. 51 of 2004 s. 36.]*

**55H. Terms used in this Division**

In this Division —

“**convicted**” means found guilty of an offence, whether after a plea of guilty or otherwise;

“**court**” means a safety and health magistrate exercising jurisdiction under section 51C(1)(b);



**“relevant offence”** means an offence against —

- (a) section 24(4), 30(7), 35(4), 38(2), 39(3), 45(5), 47(1), 48(4), (5) or (6) or 49(5) or (6); or
- (b) the regulations.

*[Section 55H inserted by No. 51 of 2004 s. 36.]*

**55I. Court may allow offender to make election**

(1) Where —

- (a) a person (the **“offender”**) is convicted of one or more relevant offences; and
- (b) the court has fined the offender,

the court may, subject to subsection (2), make an order allowing the offender to elect either —

- (c) to pay the fine or fines; or
- (d) as an alternative, to enter into an undertaking with the Commissioner under section 55M not later than a day specified by the court.

(2) A court is not to make an order under this section unless the court is satisfied that —

- (a) the breach of the relevant offence did not result in physical harm to any person;
- (b) the offender wishes an order to be made and the complainant does not oppose that being done;
- (c) the offender and the Commissioner are likely to reach agreement on the provisions of the proposed undertaking within the time that the court proposes to specify under subsection (1)(d); and
- (d) the cost to the offender of complying with the proposed undertaking will be substantially equivalent to the amount of the fine or fines imposed.

(3) After the court has fined the offender, the court may adjourn the proceedings to allow —

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- (a) the offender time to consider whether the offender wishes an order to be made; and
- (b) the complainant time to consider whether to oppose that being done,

as mentioned in subsection (2)(b).

- (4) Nothing in this Division limits the powers of a court under the *Sentencing Act 1995*.

*[Section 55I inserted by No. 51 of 2004 s. 36.]*

**55J. Making of election**

- (1) An election is made, pursuant to an order under section 55I(1), by the offender —
  - (a) lodging an election in writing with the clerk of the court in which the order was made; and
  - (b) serving a copy of the election on the Commissioner,

not later than 28 days after the day on which the order was made.

- (2) If —
  - (a) an order is made under section 55I(1); but
  - (b) the offender fails to make an election in accordance with subsection (1),

the offender is taken, at the expiry of the period mentioned in subsection (1), to have elected to pay the fine or fines.

*[Section 55J inserted by No. 51 of 2004 s. 36.]*

**55K. Failure to enter into undertaking**

An election under section 55J to enter into an undertaking lapses if the undertaking is for any reason not entered into before the time allowed under section 55I(1)(d).

*[Section 55K inserted by No. 51 of 2004 s. 36.]*

**55L. Time for payment of fines**

- (1) The liability of the offender to pay the fine or fines in connection with which an order is made under section 55I(1) is suspended by the making of the order.
- (2) If the offender elects to pay the fine or fines, for the purposes of section 32 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994* the fine or fines are taken to have been imposed on the day on which the election is made.
- (3) If the offender is taken by section 55J(2) to have elected to pay the fine or fines, for the purposes of the section referred to in subsection (2) the fine or fines are taken to have been imposed at the time mentioned in section 55J(2).
- (4) If —
  - (a) the offender elects to enter into an undertaking; but
  - (b) the election lapses under section 55K,

for the purposes of the section referred to in subsection (2) the fine or fines are taken to have been imposed on the day specified under section 55I(1)(d).

*[Section 55L inserted by No. 51 of 2004 s. 36.]*

**55M. Nature and terms of undertaking**

- (1) An undertaking for the purposes of this Division is a document by which the offender gives undertakings to the Commissioner that the offender will —
  - (a) take the action specified in the undertaking;
  - (b) bear the costs and expenses of doing so; and
  - (c) complete all of the required action not later than a day specified in the document.
- (2) The action required to be taken by the offender is to come within the provisions described in section 55N(2) or (3).

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- (3) The provisions of the undertaking are to be such as are agreed between the Commissioner and the offender.
- (4) The Commissioner is to furnish a copy of an undertaking, and of any amendment made under section 55Q, to the court concerned.

*[Section 55M inserted by No. 51 of 2004 s. 36.]*

**55N. What may be included in undertaking**

- (1) In this section —  
“**specified**” means specified in the undertaking.
- (2) An undertaking is to provide for the offender to do one or more of the following —
  - (a) to take specified steps for the improvement of occupational safety and health —
    - (i) at a specified workplace; or
    - (ii) in connection with the business or operations of the offender;
  - (b) to take specified steps to publicise details of —
    - (i) any specified offence;
    - (ii) its consequences;
    - (iii) the amount of the fine or fines imposed and the fact that the undertaking has been entered into under this Division; or
    - (iv) any other related matter;
  - (c) to remedy any consequence of a specified offence, so far as it is practicable to do so, but not in a way that is excluded by subsection (4);
  - (d) to carry out a specified project or activity for the improvement of occupational safety and health —
    - (i) in the community;
    - (ii) in a particular section of the community; or

- (iii) in connection with a particular kind of activity in the State.
- (3) The Commissioner may require that an undertaking contain any incidental or supplementary provision that the Commissioner considers necessary or expedient to achieve its purpose, including provision for —
- (a) the reporting of matters; and
  - (b) providing proof of compliance,
- to the Commissioner.
- (4) An undertaking cannot provide for the offender to take any action —
- (a) that the offender has a duty to take in order to comply with any provision of this Act; or
  - (b) for the taking of which an improvement notice or a prohibition notice could be issued.

*[Section 55N inserted by No. 51 of 2004 s. 36.]*

**55O. Effect of undertaking**

The liability of the offender to pay the fine or fines in connection with which the undertaking is given —

- (a) is suspended by the giving of the undertaking; and
- (b) is cancelled by the full discharge of the offender's obligations under the undertaking.

*[Section 55O inserted by No. 51 of 2004 s. 36.]*

**55P. Failure to comply with undertaking**

- (1) An offender commits an offence if the offender fails to fully discharge the obligations under an undertaking before the day specified in the undertaking in accordance with section 55M(1)(c).

- (2) A court that convicts an offender of an offence against subsection (1) must order that the fine or fines to which the undertaking relates be paid in addition to any penalty imposed for the offence against subsection (1).
- (3) For the purposes of section 32 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994*, the fine or fines to which an order under subsection (2) applies are taken to be imposed on the day on which that order is made.

*[Section 55P inserted by No. 51 of 2004 s. 36.]*

**55Q. Amendment of undertaking**

An undertaking may be amended by an instrument in writing signed by the offender and the Commissioner.

*[Section 55Q inserted by No. 51 of 2004 s. 36.]*

**55R. Undertaking may be published**

The Commissioner may cause an undertaking to be published in any manner the Commissioner thinks fit including —

- (a) by publication in a newspaper; or
- (b) by posting a copy of the undertaking on an internet website maintained by the Commissioner.

*[Section 55R inserted by No. 51 of 2004 s. 36.]*

## Part VIII — Miscellaneous

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

### 56. Discrimination

- (1) If an employer or prospective employer in any way treats an employee or prospective employee less favourably than would otherwise be the case for the dominant or substantial reason that the employee or prospective employee —
- (a) is or has been a member of a safety and health committee;
  - (b) performs or has performed any function as a member of a safety and health committee;
  - (c) gives or has given assistance or information to an inspector, safety and health representative or any member of a safety and health committee; or
  - (d) makes or has made a complaint in relation to safety or health to —
    - (i) the Commissioner;
    - (ii) an inspector;
    - (iii) a person who is or was his or her employer or fellow employee;
    - (iv) a safety and health representative; or
    - (v) a member of a safety and health committee,
- the employer or prospective employer commits an offence.
- (2) A trade union that in any way treats a person less favourably than it otherwise would for the dominant or substantial reason of the manner in which he or she performs or has performed any function as a safety and health representative or a member of a safety and health committee commits an offence.

*[Section 56 inserted by No. 43 of 1987 s. 13; amended by No. 30 of 1995 s. 43 and 47; No. 51 of 2004 s. 56, 99, 102(1) and 112.]*

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**57.      Codes of practice**

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



relation to which a code of practice was in effect at the time of the alleged contravention —

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

*[Section 57 inserted by No. 43 of 1987 s. 13; amended by No. 30 of 1995 s. 44 and 47; No. 51 of 2004 s. 100.]*

**57A. Visitors to comply with directions**

- (1) In this section —

**“authorised person”**, in relation to a workplace, means —

- (a) an employer of any employee at the workplace, including a person that is an employer by operation of section 23D, 23E or 23F;
- (b) any self-employed person carrying out work at the workplace; and
- (c) a person at the workplace who has the management and control of —
  - (i) the workplace; or
  - (ii) the work being carried out at the workplace;

**“conduct”** includes a failure to do a particular act or thing;

**“employee”** includes a person who is an employee by operation of section 23D, 23E or 23F.

- (2) Subsection (3) applies if —

- (a) a person (a **“visitor”**) is at a workplace otherwise than in the capacity of —
  - (i) an employer;
  - (ii) an employee;
  - (iii) a self-employed person; or

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- (iv) a person having control, to any extent, of the workplace;
- and
- (b) an authorised person believes on reasonable grounds that —
  - (i) any conduct of the visitor at the workplace; or
  - (ii) the presence of the visitor in the workplace or in a particular part of the workplace,constitutes a hazard to any person.
- (3) The authorised person may direct the visitor —
  - (a) to immediately cease engaging in the conduct concerned; or
  - (b) to immediately leave the workplace and not to return as a visitor to the workplace until permitted by the authorised person to do so.
- (4) A person who, without reasonable excuse, fails to comply with a direction given to the person under subsection (3) commits an offence.

*[Section 57A inserted by No. 51 of 2004 s. 113.]*

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

- (1) For the purposes of facilitating the coordination of the administration of laws relating to occupational safety and health, where the Governor is of the opinion that —
  - (a) any law or a provision of a law relates to occupational safety and health and that law or that provision is administered by a Minister other than the Minister charged with the administration of this Act the Governor may by order transfer the administration of that law or that provision to the Minister;
  - (b) any law or provision of a law not relating to occupational safety and health that is administered by

the Minister refers to an officer of the department the Governor may order that the reference shall be read and construed as a reference to an officer specified in the order,

and any such order shall have effect accordingly.

- (2) An order made under subsection (1) may be amended or revoked by the Governor.
- (3) An order made under subsection (1) or subsection (2) shall be published in the *Government Gazette* and shall be laid before each House of Parliament within 14 sitting days of such House.
- (4) An order under this section may provide for the transfer of any function imposed by the transferred law from the officer or authorised person specified in that law to an officer of the department who has the relevant qualifications and whose office or designation is specified in the order and any duty or power conferred by or under the transferred law may be carried out or exercised by the officer so specified and any direction or order given by the officer so specified under or for the purposes of the transferred law shall have effect accordingly.
- (5) A transferred law is deemed to be a prescribed law for the purposes of section 14(1)(b)(ii).

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

## **59. Liability of members**

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

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

**s. 60**

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**60. Regulations**

- (1) The Governor may make regulations prescribing all matters that are necessary or convenient to be prescribed for giving effect to the purposes of this Act.
- (2) Without affecting the generality of subsection (1), the Governor may make regulations —
  - (a) requiring a reference in a transferred law to be read and construed in the manner specified in the regulations;
  - (b) containing such provisions as in the opinion of the Governor are necessary or convenient for the purpose of dealing with matters that are incidental to or consequential on the making of an order under section 58 and of a regulation made pursuant to paragraph (a), including provisions of a savings or transitional nature.
- (3) A provision of a regulation made under subsection (2) may take effect on and from a day that is earlier than the day on which the regulation is published in the *Government Gazette*.
- (4) To the extent to which a provision of a regulation made under this section takes effect on and from a day that is earlier than the day on which it is published in the *Government Gazette*, the provision does not operate —
  - (a) to affect, in a manner prejudicial to any person (other than the State or a public authority), the rights of that person existing before that day of publication; or
  - (b) to impose a liability on any person (other than the State or a public authority) in respect of anything done or omitted to be done before that day of publication.
- (5) Without affecting the generality of subsection (1) regulations may be made with respect to any of the matters specified in the Schedule.

- (6) Regulations made under this Act may provide that contravention of a regulation constitutes an offence and provide for penalties not exceeding —
- (a) in the case of an offence committed by a person as an employee —
    - (i) for a first offence, a fine of \$5 000; and
    - (ii) for a subsequent offence, a fine of \$6 250;
  - (b) in the case of an offence committed by an individual where paragraph (a) does not apply —
    - (i) for a first offence, a fine of \$25 000; and
    - (ii) for a subsequent offence, a fine of \$31 250;
- or
- (c) in the case of an offence committed by a body corporate —
    - (i) for a first offence, a fine of \$50 000; and
    - (ii) for a subsequent offence, a fine of \$62 500,

and if the offence is a continuing one a further penalty not exceeding —

- (d) \$200, in the case of an offence committed by a person as an employee;
- (e) \$1 000, in the case of an offence committed by an individual where paragraph (d) does not apply; and
- (f) \$2 000, in the case of an offence committed by a body corporate,

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

*[Section 60, formerly section 21, renumbered as section 60 and amended by No. 43 of 1987 s. 16; No. 30 of 1995 s. 45; No. 51 of 2004 s. 37.]*

**s. 61**

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**61. Review of Act**

- (1) The Minister shall carry out a review of the operations of this Act on every fifth anniversary of the commencement of this Act and in the course of such review the Minister shall consider and have regard to —
- (a) the attainment of the objects of this Act;
  - (b) the administration of the Acts and laws relating to occupational safety and health administered by the Minister;
  - (c) the effectiveness of the operations of the Commission, any advisory committees and the department;
  - (d) the need for the continuation of the Commission and any committees established under this Act;
  - (e) such other matters as appear to him or her to be relevant.
- (2) The Minister shall prepare a report based on his or her review of this Act and shall, as soon as is practicable after its preparation, cause the report to be laid before each House of Parliament.

*[Section 61, formerly section 22, renumbered as section 61 by No. 43 of 1987 s. 17; amended by No. 30 of 1995 s. 47; No. 51 of 2004 s. 102(2) and (3).]*

## **Schedule**

### **Subject matter for regulations**

1. Safety and health standards or procedures to be complied with —
  - (a) at any workplace;
  - (b) in the performance of any work;
  - (c) in the use, cleaning, maintenance, disposal or transportation of any plant;
  - (d) in the use, handling, treatment, removal, processing, storing, transport or disposal of any substance;
  - (e) in the design, manufacture, importing or supplying of any plant;
  - (f) in the design, manufacture, importing or supplying of any substance; or
  - (g) in the design or construction of any building or structure, including a temporary structure.
- 1A. The imposition of duties on persons in relation to —
  - (a) the identification of hazards at workplaces;
  - (b) the assessment of risks resulting from such hazards; and
  - (c) the taking of remedial or other action.
2. The safeguarding, siting, installing, testing, altering, repairing, maintaining or dismantling of any plant.
3. The testing, analysis, labelling or marking of any plant or substance.
4. The registration or licensing of —
  - (a) any work, plant, process, substance or workplace;
  - (b) any person carrying out any kind of work,by the Commissioner or any other prescribed person or authority.
- 4A. Duties to be observed by —
  - (a) the owner; or
  - (b) a person having the control,of plant used at a workplace.

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



16. The provision by an employer of suitably qualified persons who are available to advise the employer on matters concerning the safety and health of the employees of the employer.
17. The medical examination of employees subject to their consent.
18. The provision by employers or occupiers of prescribed facilities for the safety and health of persons at the workplace.
19. The employment of young persons.
20. The safety of persons in isolated or remote areas.
21. Standards for the manual handling of loads by employees.
22. The safety of persons in the vicinity of any workplace.
23. The giving of notices, in specified circumstances, to the Minister, an inspector or other prescribed person or authority.
24. The keeping and provision of records and returns for the purposes of this Act (including records relating to accidents and dangerous occurrences that occur at work and work-related injuries suffered by employees).
- 24A. The reporting of injuries incurred at workplaces, or diseases affecting employees at workplaces, other than injuries and diseases prescribed for the purposes of section 23I.
25. The provision by an employer to the employees of the employer, in such languages as may be appropriate, of information relating to safety and health in connection with the work carried out by the employee.
26. Procedures that are to be carried out on inspections under this Act.
- 26A. The conduct of elections under this Act by secret ballot.
- [26B. *deleted*]
- 26C. The remuneration of agents for services performed in connection with appearances under section 51D.
- 26D. The establishment of safety and health committees by employers.

27. Fees (including differential and periodic fees) for the purpose of this Act.
28. Forms to be used for the purposes of this Act.
29. The recovery of fees under this Act.
30. Standards in relation to the use of any physical, biological, chemical or psychological hazard (including standards concerning exposure to any of those hazards).
31. The approval of laboratories for the analysis of samples taken under this Act and the conduct of tests for the purposes of this Act.

*[Schedule inserted by No. 43 of 1987 s. 18; amended by No. 30 of 1995 s. 46 and 47; No. 51 of 2004 s. 13, 57, 69(4), 101 and 114.]*

## Notes

- <sup>1</sup> This is a compilation of the *Occupational Safety and Health Act 1984* and includes the amendments made by the other written laws referred to in the following table <sup>14</sup>. The table also contains information about any reprint.

### Compilation table

Short title	Number and year	Assent	Commencement
<i>Occupational Health, Safety and Welfare Act 1984</i> <sup>4</sup>	101 of 1984	19 Dec 1984	4 Apr 1985 (see s. 2 and <i>Gazette</i> 4 Apr 1985 p. 1241)
<i>Occupational Health, Safety and Welfare Amendment Act 1987</i>	43 of 1987	6 Jul 1987	16 Sep 1988 (see s. 2 and <i>Gazette</i> 16 Sep 1988 p. 3757)
<i>Occupational Health, Safety and Welfare Amendment Act (No. 2) 1987</i>	55 of 1987	3 Nov 1987	3 Nov 1987 (see s. 2)
<b>Reprint of the <i>Occupational Health, Safety and Welfare Act 1984</i> as at 23 Jan 1989</b> (includes amendments listed above)			
<i>Occupational Health, Safety and Welfare Amendment Act 1990</i>	84 of 1990	17 Dec 1990	14 Jan 1991
<i>Acts Amendment (Public Sector Management) Act 1994</i> s. 19	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
<i>Mines Safety and Inspection Act 1994</i> s. 109	62 of 1994	7 Nov 1994	9 Dec 1995 (see s. 2 and <i>Gazette</i> 8 Dec 1995 p. 5935)
<i>Occupational Safety and Health Legislation Amendment Act 1995</i> Pt. 2 <sup>5,6</sup>	30 of 1995	11 Sep 1995	1 Oct 1995 (see s. 2 and <i>Gazette</i> 15 Sep 1995 p. 4301)
<b>Reprint of the <i>Occupational Safety and Health Act 1984</i> as at 16 Nov 1995</b> (includes amendments listed above)			
<i>Sentencing (Consequential Provisions) Act 1995</i> Pt. 55	78 of 1995	16 Jan 1996	4 Nov 1996 (see s. 2 and <i>Gazette</i> 25 Oct 1996 p. 5632)

## Occupational Safety and Health Act 1984

Short title	Number and year	Assent	Commencement
<i>Industrial Relations Legislation Amendment and Repeal Act 1995</i> s. 67(5)	79 of 1995	16 Jan 1996	16 Jan 1996 (see s. 3(1))
<b>Reprint of the Occupational Safety and Health Act 1984 as at 15 May 1996</b> (includes amendments listed above except those in the <i>Sentencing (Consequential Provisions) Act 1995</i> )			
<i>Statutes (Repeals and Minor Amendments) Act (No. 2) 1998</i> s. 56	10 of 1998	30 Apr 1998	30 Apr 1998 (see s. 2(1))
<i>Occupational Safety and Health (Validation) Act 1998</i> <sup>7,8</sup>	63 of 1998	12 Jan 1999	12 Jan 1999 (see s. 2)
<b>Reprint of the Occupational Safety and Health Act 1984 as at 22 Mar 1999</b> (includes amendments listed above)			
<i>Occupational Safety and Health Amendment Act 2002</i> <sup>9</sup>	54 of 2002	3 Jan 2003	s. 8: 3 Jan 2003 (see s. 2(2)); balance: 3 Jan 2004 (see s. 2(1))
<i>Statutes (Repeals and Minor Amendments) Act 2003</i> s. 87 <sup>10</sup>	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)
<i>Occupational Safety and Health Legislation Amendment and Repeal Act 2004</i> Pt. 1-6 (other than s. 65, 66 and 68), Pt. 7 and s. 104-114 <sup>11, 12, 13</sup>	51 of 2004	12 Nov 2004	Act other than Pt. 4 and 6 and s. 105 and 106: 1 Jan 2005 (see s. 2 and <i>Gazette</i> 14 Dec 2004 p. 5999-6000); Pt. 4 and 6 (other than s. 65, 66 and 68), s. 105 and 106: 4 Apr 2005 (see s. 2 and <i>Gazette</i> 14 Dec 2004 p. 5999-6000)
<i>Courts Legislation Amendment and Repeal Act 2004</i> s. 141	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>Mines Safety and Inspection Amendment Act 2004</i> s. 94	68 of 2004	8 Dec 2004	4 Apr 2005 (see s. 2(1) and <i>Gazette</i> 11 Feb 2005 p. 695)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> s. 78 and 80	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))

Short title	Number and year	Assent	Commencement
<b>Reprint 5: The Occupational Safety and Health Act 1984 as at 24 Jun 2005</b> (includes amendments listed above)			
<i>Planning and Development (Consequential and Transitional Provisions) Act 2005</i> s. 15	38 of 2005	12 Dec 2005	9 Apr 2006 (see s. 2 and <i>Gazette</i> 21 Mar 2006 p. 1078)

- <sup>1a</sup> On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

### Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Occupational Safety and Health Legislation Amendment and Repeal Act 2004</i> s. 65, 66 and 68 <sup>15</sup>	51 of 2004	12 Nov 2004	To be proclaimed (see s. 2)
<i>Petroleum Legislation Amendment and Repeal Act 2005</i> s. 50 <sup>16</sup>	13 of 2005	1 Sep 2005	To be proclaimed (see s. 2)

- <sup>2</sup> Now see the *Workplace Relations Act 1996* of the Commonwealth.
- <sup>3</sup> Under the *Public Sector Management Act 1994* s. 112(2), a reference in a written law to the Public Service Commissioner is, unless the contrary intention appears or it is otherwise provided under the *Acts Amendment (Public Sector Management) Act 1994*, to be construed as if it had been amended to be a reference to the Minister for Public Sector Management (as defined in the *Interpretation Act 1984*). This reference was amended under the *Reprints Act 1984* s. 7(5)(a).
- <sup>4</sup> Now known as the *Occupational Safety and Health Act 1984*; short title changed (see note under s. 1).
- <sup>5</sup> The *Occupational Safety and Health Legislation Amendment Act 1995* s. 49 is a transitional provision that is of no further effect.
- <sup>6</sup> The *Occupational Safety and Health Legislation Amendment Act 1995* s. 50 is a transitional provision that is of no further effect.

<sup>7</sup> The *Occupational Safety and Health (Validation) Act 1998* s. 4 reads as follows:

“

**4. Validation**

(1) In this section —

“**Commissioner**” means —

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

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

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

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

(3) Each act, matter or thing referred to in subsection (2) is, and always has been, as valid, and effective and authorised by the principal Act as it would have been if William Neil Bartholomaeus had been duly appointed as Commissioner at the time the act, matter or thing was done, the direction, authority or control exercised or the delegation made.

”

<sup>8</sup> The *Occupational Safety and Health (Validation) Act 1998* s. 5(2) reads as follows:

“

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

”

<sup>9</sup> The *Occupational Safety and Health Amendment Act 2002* s. 8 reads as follows:

“

**8. Election of safety and health representatives by police officers before the commencement of this Act**

(1) In this section —

“**commencement day**” means the day on which this Act comes into operation;

“**police officer**” has the same meaning as it has in section 3(1) of the *Occupational Safety and Health Act 1984* on and after the commencement day;

“**transition period**” means the period of 9 months ending immediately before the commencement day.

(2) The provisions listed in the Table to this subsection are to be treated as being in operation during the transition period for the purposes of allowing police officers to elect safety and health representatives for a workplace and for the training of those representatives during that period.

**Table**

**1. This Act**

s. 4

s. 5

**2. Occupational Safety and Health Act 1984**

s. 3(1) s. 32(2)(b) and (c)

s. 29 s. 35(1)(e)

s. 30 s. 35(3)(b)

s. 31 s. 56(1)

s. 32(1)

**3. Occupational Safety and Health Regulations 1996**

r. 2.2

(3) The term of a safety and health representative elected before the commencement day begins, for the purpose of section 32(1) of the *Occupational Safety and Health Act 1984*, on the commencement day.

(4) Despite subsection (3), regulation 2.2(3) of the *Occupational Safety and Health Regulations 1996* applies to a safety and health representative elected before the commencement day in relation to the first 12 months of being so elected.

”

<sup>10</sup> The *Statutes (Repeals and Minor Amendments) Act 2003* s. 87(6) reads as follows:

“

- (6) The amendment made by subsection (5) to the name of the Commission referred to in that subsection does not affect the appointment of a member of that Commission who holds office immediately before the commencement of this section.

”

<sup>11</sup> The *Occupational Safety and Health Legislation Amendment and Repeal Act 2004* s. 44 reads as follows:

“

**44. Saving provision for existing safety and health representatives**

The amendments made by section 43 do not affect the continuation in office of any safety and health representative who held office under Part IV of the *Occupational Safety and Health Act 1984* immediately before the commencement of that section.

”

<sup>12</sup> The *Occupational Safety and Health Legislation Amendment and Repeal Act 2004* s. 51 reads as follows:

“

**51. Savings and transitional provisions for existing safety and health committees**

- (1) The repeal of section 37 of the *Occupational Safety and Health Act 1984* (the “**OSH Act**”) by section 50 does not affect the status of a safety and health committee that is in existence under the OSH Act immediately before that repeal.
- (2) Any such committee is to be taken, after the commencement of section 50, to have been established under section 38 or 39B of the OSH Act inserted by section 50, as the case may be.
- (3) If before the commencement of section 50 —
- (a) a request was made in respect of a workplace under section 36(1) of the OSH Act repealed by section 50; but
  - (b) a safety and health committee had not been established for the workplace under section 37 of the OSH Act so repealed,

the duty of the employer under section 37 of the OSH Act to establish a safety and health committee for the workplace lapses on that commencement.

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<sup>13</sup> The *Occupational Safety and Health Legislation Amendment and Repeal Act 2004* Pt. 6 Div. 3 reads as follows:

“

**Division 3 — Transitional provisions**

**71. Existing referrals to safety and health magistrate**

- (1) A matter referred to a safety and health magistrate under the *Occupational Safety and Health Act 1984* and not finally determined before the commencement of section 65 —
  - (a) may continue to be dealt with; and
  - (b) any order made in such a proceeding may be appealed against or enforced,

as if that section and section 68 had not been enacted.

- (2) A determination or decision of a safety and health magistrate made before the commencement of section 65 may be the subject of —
  - (a) an application for leave to appeal under section 54B(2) of the *Occupational Safety and Health Act 1984* repealed by section 68; and
  - (b) an appeal for which leave is granted under section 54B(2),

as if section 68 had not been enacted.

**72. Appeal proceedings in progress**

- (1) An application for leave to appeal made under section 54B(2) of the *Occupational Safety and Health Act 1984* but not finally determined before the commencement of section 68, and an appeal for which leave is granted on such an application, may be dealt with and determined as if that section had not been enacted.
- (2) An appeal brought under section 54B(2) of the *Occupational Safety and Health Act 1984* but not finally determined before the commencement of section 68, may be dealt with and determined as if that section had not been enacted.

”

<sup>14</sup> The amendment in the *Petroleum Safety Act 1999* Sch. 2 that was to amend this Act was repealed by the *Petroleum Legislation Amendment and Repeal Act 2005* s. 51 before the amendment came into operation.

<sup>15</sup> On the date as at which this compilation was prepared, the *Occupational Safety and Health Legislation Amendment and Repeal Act 2004* s. 65, 66 and 68 had not come into operation. They read as follows:

“

**65. Section 51C amended**

- (1) Section 51C(1) is amended by deleting paragraph (a) and “and” after that paragraph.
- (2) Section 51C(2), (3) and (4) are repealed.

**66. Section 51D repealed**

Section 51D is repealed.

**68. Section 54B amended**

Section 54B(2), (3) and (4) are repealed.

”

<sup>16</sup> On the date as at which this compilation was prepared, the *Petroleum Legislation Amendment and Repeal Act 2005* s. 50 had not come into operation. It reads as follows:

“

**50. Occupational Safety and Health Act 1984 amended**

- (1) The amendments in this section are to the *Occupational Safety and Health Act 1984*.
- (2) Section 4(2) is repealed and the following section is inserted instead —

“

- (2) Subject to this section and except as may be otherwise expressly provided by Parliament, this Act does not apply to or in relation to a workplace —
  - (a) that is, or at which work is carried out on, a mine to which the *Mining Act 1978*, or the *Mines Safety and Inspection Act 1994*, applies;
  - (b) at which a petroleum operation, as defined in section 5(1) of the *Petroleum Act 1967*, is carried on;
  - (c) at which a pipeline operation, as defined in section 4(1) of the *Petroleum Pipelines Act 1969*, is carried on; or
  - (d) at which an offshore petroleum operation, as defined in section 4 of the *Petroleum (Submerged Lands) Act 1982*, is carried on.

”

”