

WESTERN AUSTRALIA.

CONSTRUCTION SAFETY.

No. 13 of 1972.¹

[As amended by Acts

No. 94 of 1972², assented to 4th December, 1972;

No. 8 of 1977, assented to 30th September, 1977;

No. 34 of 1978³, assented to 21st August, 1978;

and reprinted pursuant to the Amendments Incorporation Act, 1938.]

AN ACT to make provision for the Safety and Welfare of persons engaged in construction and other work and for incidental and other purposes.

[Assented to 25th May, 1972.]

BE it enacted—

PART I—PRELIMINARY.

1. This Act may be cited as the *Construction Safety Act, 1972-1978*.

Short title.
Amended by
No. 34 of
1978, s. 1.

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

Commence-
ment.

¹ Came into operation 8th February, 1974; see *Gazette* 8/2/74, p.311.

² Metric Conversion Act, 1972, relevant amendments effective 8/2/74; see *Gazette* 8/2/74, p.356.

³ Came into operation 17th November, 1978; see *Gazette* 17/11/78, p.4277.

Arrangement of Act.

3. This Act is divided into Parts, as follows—

PART I.—PRELIMINARY, ss. 1-7.

PART II.—ADMINISTRATION, ss. 8-21.

PART III.—PROVISIONS RELATING TO THE SAFETY AND WELFARE OF PERSONS ENGAGED IN CONSTRUCTION AND OTHER WORK, ss. 22-37.

PART IV.—MISCELLANEOUS, ss. 38-46.

Repeals and savings.

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 (1) The Acts specified in the Schedule to this Act are hereby repealed.

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declared that the repeal of any Act by this Act does not affect any document made or any thing done under the Act so repealed, and each such document or thing, so far as it is subsisting or in force at the time of the repeal and could have been made or done under this Act, shall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

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of subsection (2) of this section, until regulations are made under this Act, the regulations made under the Acts repealed by this Act, and in force at the time this Act comes into operation, shall apply, so far as applicable, to persons, acts, circumstances and things under this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

Act binds the Crown.

5. This Act binds the Crown.

Interpretation.
Amended by No. 94 of 1972, s. 4.

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

“building or structure” includes any erection, edifice, wall, chimney, fence, bridge, dam, reservoir, wharf, jetty, earth works, reclamation, ship or other floating structure;

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

“compressed air work” means work done by a person while breathing any gas or mixture of gases at a greater pressure than atmospheric pressure;

“construction work” means—

- (a) any work in connection with the construction, erection, installation, addition to, alteration, repair, maintenance, cleaning, painting, renewal, removal, dismantling or demolition of any building or structure which, when done in relation to a building or structure, is done at or adjacent to the site thereof and which, when done in relation to a structure that is a ship or other floating structure, includes the construction of the ship or other floating structure and all work that is done on or adjacent to a ship or other floating structure in a dock or on a slip or at a wharf or other place;
- (b) any work on which a hoisting appliance or any scaffolding or shoring is used or intended to be used;
- (c) any work in driving or extracting piles, sheet piles and trench sheet;
- (d) any work in laying or lining any pipe having an internal diameter exceeding 180 millimetres; or
- (e) any work in sinking or lining any well or borehole;

"excavation work" includes trenching or a cutting and any work in connection with—

(a) excavating for or preparing foundations for any building or structure; or

(b) excavating for water, sewerage, drainage, gas or electricity supply,

but does not include an excavation less than 1.5 metres in depth measured from the top of the excavation;

"explosive powered tool" means a tool or device by which a stud, pin, dowel, screw, rivet, spike or other object is driven against, into or through a substance by means of an explosive charge;

"formwork" means any structure, whether temporary or otherwise, erected for the purpose of supporting concrete or other materials of a similar kind;

"gear" includes a ladder, plank, chain, rope, fastening, coupling, fitting, hoist-block, stay, pulley, hanger, sling, brace or other movable contrivance of a like kind, whether or not it forms part of, or is used in connection with scaffolding or a hoisting appliance, used or intended to be used on or in connection with work to which this Act applies;

"hoisting appliance" means any contrivance or appliance used or capable of being used for raising, lowering, handling or transporting loads in like manner on or in connection with work to which this Act applies, including any hoist, crane or conveyor;

"inspector" means any inspector of construction safety appointed under this Act and includes the Chief Inspector and any person appointed for the time being to perform the whole or any part of the duties of an inspector;

“main contractor” means—

- (a) a person who has contracted with the owner of work to which this Act applies, to undertake or carry out such work;
- (b) if there is no such person as is referred to in paragraph (a) of this definition, in relation to the work, an owner—
 - (i) who undertakes or carries out such work; or
 - (ii) who contracts with more than one person to undertake or carry out such work;

“notifiable work” means work to which this Act applies that is, from time to time, prescribed as notifiable work;

“owner” in relation to work to which this Act applies, means the person for whose direct benefit such work exists upon its completion; and in relation to any gear, scaffolding, hoisting appliance, power driven equipment and shoring means the person to whom it belongs or the lessee, mortgagee, hirer or borrower thereof;

“platform” includes a surface of a plank or planks or other materials used to permit a person to stand upon, or used as a working platform or to load materials or things of any kind;

“power driven equipment” means equipment that is driven or worked by compressed air, internal combustion, electricity or any other power not being human or animal power; and includes any electrical equipment and wiring associated therewith and any explosive powered tool but does not include any hoisting appliance;

"public stand" means a stand temporarily erected or temporarily set up to support persons assembled thereon for the purpose of viewing or listening to any display or performance of any kind;

"scaffolding" means—

(a) any structure, staging, platform, swinging stage or boatswain's chair; or

(b) any ladder forming part of the scaffolding,

set up or used or intended to be set up or used by workmen in connection with carrying out any work to which this Act applies, or for the support or protection of workmen or persons on or in the vicinity of the work and includes supporting structure in connection with the scaffolding;

"serious bodily injury" means an injury that is likely to incapacitate the person suffering the injury from work for three or more working days;

"shoring" means any material or equipment used for the temporary support of any building or structure or part thereof or of any excavation work;

"site" means the place on which work to which this Act applies is or is to be carried out, including the adjoining areas where gear, materials and the like to be used in that work are stored or located, being the place over which the main contractor has control for the purpose of carrying out such work;

"subcontractor" in relation to work to which this Act applies, means—

(a) a person who contracts with a main contractor to undertake or carry out part of that work and includes a person who contracts with a subcontractor to undertake or carry out part of that work; or

- (b) an owner who undertakes part of that work or subcontracts to undertake part of that work;

“supporting structure” means any structure, structural member or foundation (including any part of a building or its foundations) subject in any manner to direct or indirect loading as the result of the installation or use of scaffolding, hoisting appliance, power driven equipment or a public stand;

“workman” means any person working on construction work for reward, whether as an employee, employer, main contractor or subcontractor, but does not include an owner in relation to that work or any member of a crew of a ship where such work is being done on the ship;

(2) In this Act a reference—

- (a) to a failure to do any act or thing, includes a reference to a refusal or neglect to do that act or thing;
- (b) to erect, includes a reference to erection, to set up, to build, to construct or to set or place in position, and similar connotations;
- (c) to demolish, includes a reference to demolition, to take away, to remove or to dismantle, and similar connotations.

7. (1) Subject to this section, this Act does not apply to, or in relation to any act, matter, circumstance or thing touching, concerning or arising out of or connected with the construction or carrying out of any work referred to in section 15 of this Act that is constructed or carried out on, in or about any mine, petroleum well or petroleum pipeline to which the Mining Act, 1904, the Mines

Application
of Act.
Amended by
No. 34 of
1978, s. 3.

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

(2) The Minister and the Minister for Mines may, by instrument in writing, jointly declare that this Act or such part thereof as is specified in the instrument, shall so apply for such period, to any such work referred to in section 15 of this Act that is to be or is being constructed or carried out in or about any such mine to which the Coal Mines Regulation Act, 1946 or the Mines Regulation Act, 1946 applies, or such part of the mine as is so specified.

(3) On the service of a copy of the instrument on the main contractor in relation to the work specified therein and on any person who is within the meaning of that term as defined for the purposes of the Coal Mines Regulation Act, 1946 or the Mines Regulation Act, 1946 the manager in relation to the mine so specified, this Act or part thereof so specified shall apply accordingly, and so applies to the exclusion of the Acts referred to in subsection (1) of this section.

(4) A copy of the instrument shall be published in the *Government Gazette* as soon as practicable, after it is made.

PART II.—ADMINISTRATION.

Administra-
tion.

8. This Act shall be administered by the Minister, and subject to any direction of the Minister, by the person holding the office of Under Secretary for Labour and Industry in the Department of Labour and Industry in the Public Service of the State.

Inspectors.

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

(2) A person, other than a person appointed the Chief Inspector of Construction Safety, shall not be appointed as an inspector unless he has passed such examinations or has such qualifications as may be prescribed.

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

- (a) in the event of illness or absence of the Chief Inspector, has, and may exercise and perform the powers, authorities, duties and functions of the Chief Inspector under this or any other Act: and
- (b) may exercise such powers of the Chief Inspector as the Chief Inspector may, from time to time, by instrument in writing assign to him, either generally or in any particular case.

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

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

(5) Notwithstanding subsection (2) of this section—

- (a) a person may be appointed by the Minister for a period not exceeding two years in the aggregate as a temporary inspector for carrying out only such powers, duties and functions as are, from time to time, by instrument in writing, assigned to him by the Chief Inspector, and his appointment as an inspector of any class or grade shall not be confirmed until he has passed the prescribed examinations and has the prescribed qualifications, and has carried out to the satisfaction of the Chief Inspector those powers, duties and functions for a period of at least six months;
- (b) a person who is an inspector under the Factories and Shops Act, 1963, or the Machinery Safety Act, 1974, may be appointed by the Minister to be an inspector for such period as the Minister determines and to carry out only such powers, duties and functions as are, from time to time, by instrument in writing assigned to him by the Chief Inspector.

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

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

Penalty: Imprisonment for a term of six months or to a fine of two hundred dollars or to both.

10. The principal function of an inspector under this Act is to promote the safety and welfare of workmen engaged on work to which this Act applies, to advise employers and workmen as to safe practices recommended in respect of such work, to ensure that the provisions of this Act are complied with, to investigate accidents occurring in respect of such work and generally to take all such steps as may be desirable to prevent or limit the occurrence or repetition of accidents in such work.

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

11. (1) Every inspector may—

General powers and duties of inspectors

- (a) at all reasonable hours by day or by night, enter any place and remain in or upon any place where any work to which this Act applies is being carried out or where he has cause to believe that any such work is being or is about to be carried out, and may inspect the work in order to ascertain whether or not the provisions of this Act have been or are being complied with;
- (b) in making any such inspection, call to his aid any member of the Police Force of the State whom he may think competent to assist him in the execution of his duty or where he has reasonable cause to apprehend any obstruction in the execution of his duty;
- (c) make such examination and inquiry as he thinks necessary to ascertain whether the provisions of this Act have been or are being complied with;
- (d) require the production of any record, notice or other document that any person is by this Act required to keep or exhibit in respect of work to which this Act applies and copy any such document or make extracts from it;

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

- (e) affix at suitable places on any site printed notices displaying abstracts of this Act or safety information for the benefit of workmen;
- (f) take with him into any place referred to in paragraph (a) of this subsection, any person he may require as a professional or expert adviser or interpreter and whose assistance he considers necessary in the performance of his duties under this Act;
- (g) at all reasonable hours by day or by night, question, either alone or in the presence of some other person, any person as to compliance with this Act in any particular;
- (h) subject to the direction of the Chief Inspector, institute proceedings for offences against this Act; and
- (i) exercise such other powers and authorities as may be prescribed.

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

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

Offence of
obstructing
adviser or
interpreter.

12. (1) A person who obstructs a person who is acting as professional or expert adviser to, or interpreter for, an inspector shall be deemed to have obstructed the inspector in the execution of his duties under section 13 of this Act and is liable to be punished under that section accordingly.

(2) The owner, his agent or person in charge of any site or place referred to in section 11 of this Act shall furnish the means required by an inspector as necessary for any entry, inspection, examination or inquiry or otherwise for the exercise of his powers under this Act.

Owner,
agent and
person in
charge of
site to assist
inspector.

13. Subject to subsection (2) of section 11 of this Act, a person shall not— Offences.

- (a) assault, resist or impede, delay or in any way obstruct an inspector in the exercise of his powers or in the discharge of his duties under this Act;
- (b) fail, without lawful excuse, to answer any question put to him in pursuance of this Act by an inspector or a person acting as professional or expert adviser to, or interpreter for, an inspector, or give a false or misleading answer to any such question;
- (c) fail to comply in any respect with the lawful written request, requirement or order of an inspector;
- (d) when required by or under this Act to furnish any assistance or to furnish any information to an inspector, fail without lawful excuse to furnish that assistance or information, or furnish false or misleading information;
- (e) fail to produce any record, notice or other document which, pursuant to paragraph (d) of subsection (1) of section 11 of this Act, he is required by an inspector to produce, or fail to allow the inspector, upon his so producing the same, to make copies of or take extracts from it or any part thereof or of any entries therein;

- (f) directly or indirectly prevent any person from appearing before or being questioned by an inspector; or
- (g) use any threat or any abusive or insulting language to any inspector or any workman with respect to any inspection, examination or interrogation made by an inspector.

Penalty: Two hundred dollars.

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

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

Work to
which this
Act applies.

15. (1) For the purposes of this Act the expression "work to which this Act applies" means—

- (a) any construction work;
- (b) any excavation work;
- (c) any compressed air work done in connection with construction work or excavation work;
- (d) the erection or demolition of any hoisting appliance or scaffolding; or
- (e) any other work declared by the Governor by proclamation pursuant to subsection (2) of this section, to be work to which this Act applies,

on which workmen are engaged or required to work.

(2) The Governor may, from time to time, by proclamation declare any work to be work to which this Act applies and may, by subsequent proclamation, revoke any such proclamation.

16. (1) Where the Governor is of opinion that the carrying out of any work to which this Act applies, or any class of that work is likely to be dangerous to workmen employed therein, the Governor may prescribe that work or that class of work as notifiable work for the purposes of this Act.

Work to which this Act applies that is notifiable

(2) Subject to subsection (6) of this section, no main contractor or owner who undertakes any part of any notifiable work shall commence such work without having notified the Chief Inspector of the nature of the work and the time when he intends to commence it.

(3) The notification shall be in the prescribed form and shall contain such particulars as may be prescribed.

(4) The notification shall be given to the Chief Inspector at least twenty-four hours before the time when it is intended to commence the work and shall be accompanied by the prescribed fee.

(5) Any main contractor or owner who undertakes any part of any notifiable work that has not been notified to the Chief Inspector in accordance with this section commits an offence against this Act.

(6) It is a defence to a charge of an offence against this section to prove that because of an emergency arising from the need to protect life, limb or property, it was not practicable to give the notification and pay the fee at least twenty-four hours before the notifiable work was commenced, as required by this section, and that the notification was given and the prescribed fee was paid as soon as practicable thereafter.

Boards of
Reference
and
arbitrators.

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

(2) A Board of Reference shall consist of three members appointed by the Minister, of whom—

- (a) one shall be appointed Chairman of the Board by the Minister;
- (b) one shall be so appointed on the written nomination of the employers carrying out the work to which this Act applies and to which the appeal to be heard by the Board, relates;
- (c) one shall be so appointed on the written nomination of the workers engaged on that work.

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

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

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

- (c) shall set forth in writing the reasons for its or his decision made on the appeal and forward a copy thereof to each party to the appeal.

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

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

- (a) may determine the appeal on the record of the appeal heard by the Board of Reference or arbitrator as the case may be, or on hearing evidence and submissions anew, or partly on each as he thinks fit;
- (b) may confirm, vary or set aside the decision appealed against;
- (c) may make such order as to costs of and incidental to the appeal as he considers just; and the costs may be recovered in like manner as a debt adjudged by the Local Court to be paid, can be recovered,

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

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

18. (1) Any person aggrieved by a direction or order of an inspector in respect of any work to which this Act applies, may within twenty-eight days, or, where any other time has been prescribed, within that prescribed time, after the direction or order has been given to him, appeal against that direction or order to the Minister. Appeals.

(2) Notice of the appeal shall be given to the Minister and a copy thereof to the Chief Inspector.

(3) The Minister shall refer the appeal to a Board of Reference constituted under section 17 of this Act or to an arbitrator appointed under that section if the parties to the appeal request the Minister in writing to refer the appeal for hearing to an arbitrator instead of referring it to such a Board.

(4) A person appointed an arbitrator under section 17 of this Act to hear an appeal shall be a person who is technically qualified in relation to the matter the subject of the direction or order the subject of the appeal.

Construction
Safety
Advisory
Board.
Amended by
No. 34 of
1978, s. 4.

19. (1) There shall be a Board, to be called the Construction Safety Advisory Board, which shall consist of a Chairman and two other members appointed by the Governor.

(2) Of the members—

- (a) one shall be the person who for the time being holds the office of Under Secretary for Labour and Industry, who shall be Chairman of the Board;
- (b) one shall be a person willing to act as a member of the Board appointed upon the joint written nomination of the bodies known as the Confederation of Western Australian Industry (Incorporated), Master Builders Association of W.A. and W.A. Branch of the Australian Federation of Construction Contractors, to represent employers engaged in the work to which this Act applies;
- (c) one shall be a person willing to act as a member of the Board appointed upon the written nomination of the body known as The Trades and Labour Council of Western Australia to represent employees engaged in work to which this Act applies.

(3) If any body or bodies referred to in subsection (2) of this section fails or fail to submit to the Minister the name of a person nominated by it or them to be a member of the Board in accordance with subsection (2) of this section, or deputy member thereof in accordance with paragraph (b) of subsection (6) of this section, within thirty days after the receipt by it or them of a written request from the Minister so to do, the Minister may nominate for appointment as a member of the Board or deputy member thereof, in place of the body or bodies in default, a person willing to act as such member or such deputy member.

(4) (a) The members of the Board, other than the Chairman thereof—

(i) shall be appointed for a term of five years; and

(ii) are eligible, subject to this section, for reappointment from time to time, on the expiration of their term of office.

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

(5) If the Chairman of the Board is unable to attend a meeting thereof, he may appoint the person for the time being holding the office of Assistant Under Secretary for Labour and Industry or some other person to attend and act in his place at that meeting and that person, who so acting, shall for all purposes, be deemed to be the Chairman.

(6) (a) The Governor may appoint a person to act as a deputy for the member of the Board who represents thereon the—

(i) employers engaged in any work to which this Act applies; or

(ii) the employees engaged in such work, while that member is incapacitated by illness or other sufficient cause from performing the duties of his office.

(b) Each deputy member of the Board—

- (i) shall be so appointed upon the written nomination of the body or bodies that nominated the member for whom he is to be the deputy member or the nomination of the Minister as provided in subsection (3) of this section where the body or bodies has or have failed to nominate a member; and
- (ii) may act as a member during the incapacity of the member for whom he is a deputy and while so acting shall, for all purposes, be deemed to be a member.

(7) If a member of the Board or deputy member thereof—

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

he shall be deemed to have vacated his office of member of the Board or deputy member thereof.

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

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

(10) (a) The Board shall hold its meetings at such times and places as the Board may, from time to time, determine.

(b) The Chairman of the Board may, at any time, convene a meeting of the Board.

(c) The Chairman of the Board shall preside at all meetings thereof at which he is present.

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

20. (1) The Board shall in relation to any work to which this Act applies investigate and make recommendations to the Minister with regard to all measures necessary for securing the safety and welfare of employees engaged therein, including—

Powers and
duties of
Board.

- (a) the prevention or diminution of noise;
- (b) the lighting and ventilation of sites;
- (c) the prevention of accidents;
- (d) the supply and use of protective clothing and protective equipment;
- (e) the welfare of employees;
- (f) the provision of facilities for taking meals;
- (g) the provision of facilities for medical or first aid attention;
- (h) the making, amending or revoking of any regulation; and
- (i) any matter that may be prescribed.

(2) The Board shall in relation to any work to which this Act applies—

- (a) collaborate with organisations of employers and of employees and with authorities and bodies engaged in technical research in relation to any of the matters specified in subsection (1) of this section;
- (b) investigate and report on any question referred to it by the Minister in relation to any of the matters referred to previously in this section and any other matters relating to or affecting the safety or welfare of employees engaged in work to which this Act applies; and
- (c) carry out such other duties and exercise such other powers as may be prescribed.

(3) The Board or any member thereof who is authorized in writing by the Chairman of the Board so to do, may at any reasonable time enter and inspect any site and any work to which this Act applies, that is being carried out thereon.

(4) A member of the Board shall not, directly or indirectly, communicate or divulge to a person other than the Minister or the Under Secretary for Labour and Industry any information relating to any owner, main contractor and work to which this Act applies, that comes to his knowledge from records in the custody of the Department of Labour and Industry and in consequence of his position as such a member, or make use of any information that so comes to his knowledge, except for the purpose of the performance of his duties as a member of the Board.

Penalty: One hundred dollars.

Annual
report as to
administra-
tion of the
Act.

21. The Under Secretary for Labour and Industry in the Department of Labour and Industry in the Public Service of the State shall make, in each year a written report to the Minister as to the administration of this Act, and the report shall be made before the first day of October in each year.

PART III.—PROVISIONS RELATING TO THE SAFETY AND WELFARE OF PERSONS ENGAGED IN CONSTRUCTION AND OTHER WORK.

22. All scaffolding, gear, hoisting appliances, power driven equipment and shoring used for or in connection with any work to which this Act applies—

Require-
ments for
scaffolding,
gear, etc.

- (a) shall comply with such requirements as are prescribed in relation thereto; and
- (b) shall be erected, maintained and used in accordance with such requirements as are so prescribed.

23. (1) Every main contractor, in relation to work to which this Act applies that is being undertaken or carried out by him, shall ensure that—

Duty of
main con-
tractor and
subcon-
tractor for
safety on
site.

- (a) the requirements of this Act are complied with on the site;
- (b) all scaffolding, gear, hoisting appliances, power driven equipment and shoring used or intended to be used in any such work is maintained in a safe and serviceable condition; and
- (c) all working places on or about which such work is being undertaken or carried out by him or on his behalf are maintained in a safe and orderly condition.

"This Act"
includes
regulations.

See s. 4 Act
No. 30 of
1918.

(2) Without affecting the operation of subsection (1) of this section, every subcontractor who undertakes or carries out any work to which this Act applies, shall ensure that—

- (a) the requirements of this Act are complied with on the site or on that part of the site where such work or portion thereof is being undertaken or carried out by him;

- (b) all scaffolding, gear, hoisting appliances, power driven equipment, shoring and working places provided by him and used or intended to be used by himself or any workman in any such work or portion thereof are maintained in a safe and serviceable condition and used as prescribed; and
- (c) all reasonable precautions are taken so that all scaffolding, gear, hoisting appliances, power driven equipment, shoring and all working places used or intended to be used by himself or workmen employed by him are in a safe and orderly condition before and whilst being used by him and them and are used as prescribed.

**Protective
equipment.**

24. (1) Every employer shall provide or cause to be provided for each workman engaged in any capacity on work to which this Act applies such protective equipment as may be prescribed, subject to such conditions as may be prescribed.

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

(3) A workman shall not—

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

(c) act in such a way on a site as to—

- (i) render ineffective any safety or protective measures provided by his employer in accordance with the regulations; or
- (ii) endanger his own safety or that of another person.

Penalty: One hundred dollars.

25. A main contractor who undertakes or is carrying out any work to which this Act applies shall, where natural lighting on the site is insufficient for such work to be done on the site, provide, in accordance with the regulations, adequate lighting for illuminating the work. Artificial lighting.

Penalty: Two hundred dollars.

26. (1) Where the Chief Inspector is aware or has reason to believe that a provision of— Provision of amenities.

- (a) any other Act or regulation or by-law made thereunder; or
- (b) any award,

is being contravened and the provision requires the main contractor to provide or cause to be provided on the site where workmen are engaged on work to which this Act applies, and in respect of which he is the main contractor, the amenities referred to in subsection (2) of this section, the Chief Inspector shall forthwith report the matter to the appropriate officer under such other Act or in respect of such award, in order that he may take such action as the officer thinks fit.

(2) The amenities to which subsection (1) of this section applies are the provision on the site of—

- (a) wholesome drinking water;
- (b) washing facilities;
- (c) accommodation for meals, clothing and tools;
- (d) sanitary conveniences;
- (e) first aid equipment;
- (f) appliances for the prevention and extinction of fire; and
- (g) adequate ventilation.

Safety of
scaffolding.
Vide s. 5 (2).

27. (1) Scaffolding of a height or kind prescribed shall not be erected, altered, interfered with or dismantled except by competent workmen under the charge and supervision of a person having such qualifications as may be prescribed.

Safety of
certain
work.

(2) Any work to which this Act applies, or part thereof, of a height, kind or class prescribed, shall not be carried out except by competent workmen and under the charge and supervision of a person having such qualifications as may be prescribed.

Safety of
plant, tools
and gear.

(3) Any explosive powered tool, power driven equipment and gear used on any work to which this Act applies of a class or kind prescribed shall not be so used except subject to such conditions as may be prescribed and by persons having such qualifications as may be prescribed.

(4) (a) The class or classes of licenses, certificates and permits or provisional certificates and permits that are required to be held by any prescribed

person authorizing him to carry out any prescribed work to which this Act applies or any part thereof, shall be as prescribed.

(b) With respect to any such licence, certificate and permit or provisional certificate and permit—

- (i) the form and duration thereof and the terms and conditions upon which, and the circumstances in which, any of them may be issued, held, suspended, cancelled, altered, extended or replaced;
- (ii) the fees payable in respect thereof;
- (iii) the qualifications, standards and other requirements of applicants therefor;
- (iv) the examination or testing of those applicants and the fees payable in respect of the examination and testing,

shall be as prescribed.

28. (1) Where it appears to the Chief Inspector that on any work to which this Act applies— Powers of
Chief
Inspector.

- (a) the use or operation on any such work of any explosive, scaffolding, gear, shoring, hoisting appliance or power driven equipment would be dangerous to life or limb of any person; or
- (b) any explosive, scaffolding, gear, shoring, hoisting appliance or power driven equipment does not comply with or is not set up, erected, maintained or used and in the case of an explosive stored in accordance with the requirements prescribed,

the Chief Inspector shall give such directions in writing to the main contractor or the subcontractor as the Chief Inspector considers necessary to prevent accidents or for ensuring or securing compliance with those requirements and specifying the time within which those directions shall be complied with,

and the main contractor or the subcontractor to whom the directions are given, as the case may be, shall carry out or cause to be carried out those directions within that time.

(2) Where it appears to the Chief Inspector that the employment of any workman on any work to which this Act applies, without the use of scaffolding, gear, shoring, hoisting appliance or power driven equipment would be dangerous to life or limb of any person, the Chief Inspector shall give directions in writing to the main contractor or subcontractor and to the workman that such scaffolding, gear, shoring, hoisting appliance or power driven equipment as is specified in the directions be used within the time specified in the directions, and the main contractor or the subcontractor or workman to whom the directions are given shall carry out those directions within that time.

(3) Where it appears to the Chief Inspector that, on any work to which this Act applies, or in any other work in connection or in conjunction therewith, any person, whether engaged on that work or not, is exposed or is likely to be exposed to a risk of injury from falling, or from being struck by falling or moving material or from any other potential hazard in the vicinity of the work, and that it is reasonable and practicable—

- (a) to protect any person from such risk by a fence, guard, screen, net, rope, scaffolding or other precautions; or
- (b) to protect any workman by supplying to him and causing him to use protective equipment,

the Chief Inspector shall give such directions in writing to the main contractor or subcontractor to take such precautions as the Chief Inspector considers necessary and specifies in the directions within the time specified in the directions for the purpose of removing or reducing such risk and the main contractor or subcontractor to whom the directions are given shall carry out those directions within that time.

(4) If the main contractor or subcontractor is not on the site at the time the work to which the directions relate is being carried out, any direction given either to the main contractor or subcontractor by the Chief Inspector under this section may be given to the person apparently in charge of the work to which the directions relate, and if the directions are given to such person, that person shall forthwith bring the directions to the notice of the main contractor or the subcontractor to whom they are given.

(5) Where any directions in writing are given to a person pursuant to this section, a copy thereof shall also be forthwith posted to the main contractor or subcontractor to whom those directions are given.

29. (1) Where the Chief Inspector gives any directions under section 28 of this Act, he may also, if he considers it necessary, at the same time or subsequently order in writing any person forthwith—

Power of Chief Inspector to give further directions and to cancel orders and directions.

- (a) to cease to use, or work in connection with, any scaffolding, gear, shoring, hoisting appliance or power driven equipment;
- (b) to cease to carry out any work to which this Act applies and in respect of which the directions have been given, or any work being carried out in the vicinity thereof that may become dangerous unless the directions are complied with; or
- (c) to refrain from using or permitting any person to use any site or any explosive thereon or public stand to which the directions relate,

until the directions as initially made or as varied or an order on an appeal therefrom have or has been complied with.

(2) Any order or directions in writing given pursuant to this Act by the Chief Inspector or an inspector may be cancelled or from time to time varied by the Chief Inspector or by his direction.

Delegation
by Chief
Inspector.

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

(2) A power or function so delegated may be exercised or performed by the delegate in accordance with the instrument of delegation, and if the exercise of any such power or the performance of any such function is dependent upon the opinion, belief or state of mind of the Chief Inspector in relation to a matter, that power may be exercised or that function performed by the delegate upon the opinion, belief or state of mind of the delegate in relation to that matter.

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

Offence of
refusing or
failing to
comply with
direction or
order.

31. A person who refuses or fails to comply with any direction or order in writing given to him pursuant to section 28 or 29 of this Act is guilty of an offence against this Act.

Offence of
refusing or
failing to
comply with
decision of
Board of
Reference or
arbitrator.

32. A person who refuses or fails to comply with any decision of a Board of Reference or an arbitrator made on appeal to it or him pursuant to section 18 of this Act against any such direction or order is guilty of an offence against this Act.

32A. (1) Where any order or directions are given pursuant to this Act by an inspector and effect is not given thereto the Supreme Court may, on the application of the Chief Inspector, grant an injunction restraining a person from engaging in any course of conduct, or doing any act, that constitutes or would constitute—

Injunctions.
Added by
No. 8 of
1977, s.2.

- (a) a contravention of a provision of this Act;
- (b) attempting to contravene such a provision;
or
- (c) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision,

notwithstanding that an appeal under section 18 of this Act may be pending in relation to the matter.

(2) An injunction granted for the purposes of this section shall have effect for such period as is specified therein, but in so far as such an injunction is inconsistent with the provisions of an order made on appeal under section 17 of this Act the provisions of that order shall prevail.

(3) Where, on an application made under this section, the Court determines that the matter is affected by the provisions of any other order made by the Court, or any other court in the State, the Court may rescind or vary that other order in so far as the circumstances require.

(4) Where, by reason of the operation of any other order, the desirability that other persons should be heard in regard to the matter, or for any other cause, it is in the opinion of the Court desirable the Court may grant an interim injunction pending determination of an application under subsection (1) of this section.

(5) The Court may rescind or vary any injunction or interim injunction granted under this section.

Inspection
report.

33. (1) An owner, main contractor or subcontractor may request in writing an inspector to issue to him a report to be known as an inspection report, where work to which this Act applies or part thereof on the site has been inspected by the inspector.

(2) A request for an inspection report may be made only while the inspector to whom it is made is on the site and the report shall be in the prescribed form and shall be given by an inspector as soon as practicable after the completion of the inspection to which it relates and not otherwise.

Prior
approval of
work by
Chief
Inspector.

34. (1) An owner, main contractor or subcontractor, prior to commencing any work to which this Act applies, may apply in writing to the Chief Inspector to approve of the method by which the work is to be done and the use of any gear or equipment to be used on the work.

(2) If the Chief Inspector is satisfied that sufficient information and detail have been submitted in the application to enable it to be properly considered and determined by him, he shall forward to the applicant his decision in writing on the application within seven days after its receipt by him.

(3) An applicant aggrieved by the decision of the Chief Inspector on an application made to him pursuant to this section may, within seven days after the receipt of the decision, appeal under section 18 of this Act to the Minister against the decision.

(4) The Minister shall refer the appeal to an arbitrator under section 18 of this Act, and the provisions of that section, with such modification as the circumstances require, apply to the appeal.

Accidents to
be reported.
Amended by
No. 34 of
1978, s. 5.

35. (1) Where an accident occurs during the course of work to which this Act applies and the accident—

(a) causes loss of life or serious bodily injury to any workman or other person; or

- (b) is an accident involving the breakage, distortion or damage to any load bearing part of any scaffolding, gear, hoisting appliance, shoring, public stand or supporting structure,

written notice of the accident in the prescribed form shall be given to the Chief Inspector in accordance with this section.

(2) Where the accident causes loss of life or serious bodily injury to—

- (a) a workman, notice of the accident shall be given forthwith by the employer of the workman; or
- (b) a person other than a workman, notice shall be so given by the main contractor.

(3) Where the accident is of a kind referred to in paragraph (b) of subsection (1) of this section, notice of the accident shall be given within twenty-four hours after the happening of the accident by the person, or the employer of that person on his behalf, who, at the time the accident occurred, was controlling the use of the scaffolding, gear, hoisting appliance, shoring or supporting structure or the use or construction of the public stand.

(4) Where the accident causes loss of life or serious bodily injury to any person, the employer or main contractor required to give notice of the accident shall inform the Chief Inspector verbally of the occurrence of the accident by the quickest method of communicating such information to the Chief Inspector that is available to the employer or main contractor, and the Chief Inspector, in the case of the loss of life of a workman, shall thereupon notify the secretary of the industrial union of workers of which the workman was a member of the occurrence of the accident.

(5) After the occurrence of an accident to which this section applies, a person shall not move or in any way interfere with any scaffolding, gear,

hoisting appliance, shoring, supporting structure or public stand involved in the accident, or any thing affected or damaged as a result of the accident, unless he has first obtained the written permission of an inspector or a member of the Police Force where an inspector is not available, but this subsection does not apply where any such movement or interference is necessary for the purpose of saving life or relieving human suffering or preventing further injury to property.

Duty of
Chief
Inspector or
inspector on
receipt of
notice of
accident.
Repealed
and
re-enacted
by No. 34 of
1978, s. 6.

36. (1) The Chief Inspector or an inspector directed by him—

(a) shall, upon receipt of a notice of an accident involving loss of life, forthwith; and

(b) may, upon receipt of a notice of an accident involving serious bodily injury,

go to the site where the accident occurred and investigate the circumstances of the occurrence of the accident, and where practicable, determine the causes thereof.

(2) Where an inquiry pursuant to subsection (1) of this section has been conducted by an inspector, the inspector shall immediately submit a report of his finding in writing to the Chief Inspector.

Inquiry by
Stipendiary
Magistrate
on accident
causing
death or
serious
bodily in-
jury.

37. (1) Where an accident to which paragraph (a) of subsection (1) of section 35 of this Act applies has occurred, the Minister may direct an inquiry to be held before a Stipendiary Magistrate and two other persons appointed by the Minister.

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

(3) With respect to the summoning and attendance of witnesses and the production of documents at or upon the inquiry, and the examination of those witnesses upon oath, the Stipendiary Magistrate has all the powers that he would have or might exercise in any case within his jurisdiction under the Justices Act, 1902.

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

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

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

PART IV.—MISCELLANEOUS

38. No matter or thing done by an inspector in good faith in the exercise or purported exercise of any power or function conferred on or exerciseable by him by or under this Act shall subject the inspector to any personal liability in respect thereof.

Protection
of inspector.

39. (1) In any prosecution for offences against this Act—

- (a) it is not necessary to prove the appointment of an inspector or his authority to do any act, to issue any order, to give any direction or notice, to make any request or take any proceedings, but nothing in this paragraph prevents the right of the defendant in any such prosecution to prove the extent of that authority;

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

- (b) a signature purporting to be that of the Minister, Chief Inspector, Deputy Chief Inspector or inspector shall be taken to be the signature of the person whose signature it purports to be until the contrary is proved;
- (c) a statement signed by the Chief Inspector that a certificate, permit or other document of the description mentioned in the statement has or has not been issued pursuant to this Act to a person and, in the case of a certificate, permit or other document that has been so issued, as to the date of issue of, and the particulars contained in, the certificate, permit or other document, is evidence of the matter specified in the statement; and
- (d) the allegation or averment in any complaint that any work is work to which this Act applies is evidence thereof unless the contrary is proved.

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

(3) The burden of proof that any scaffolding, gear, hoisting appliance, power driven equipment or shoring was not, on any date alleged in a complaint for an offence against this Act, in the place so alleged, is on the defendant named in the complaint.

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

40. Any notice, order or other document required or authorised by or under this Act to be served on, sent or given to, or lodged with a person may be so served, sent, given or lodged—

Provisions
as to giving
of notices.

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

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

Agent or
employee
liable for
penalty.

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

Defendant
may have
actual
offender
charged.

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

- (a) the offence was committed in fact by that other person, without the knowledge, consent or connivance of the person charged in the first complaint; and

- (b) the person charged in the first complaint has done all that could be expected of him in the circumstances of the case, to prevent the commission of the offence,

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

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

Proceedings
for offences
to be heard
by Stipen-
diary Magis-
trate.

43. All proceedings in respect of offences against this Act shall be heard and determined by a Court of Petty Sessions constituted by a Stipendiary Magistrate sitting alone.

Offences
and general
penalty.
Amended by
No. 34 of
1978, s. 7.

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

(2) Every person who commits an offence against this Act for which no penalty is provided elsewhere than in this section is liable, on conviction, to a fine of four hundred dollars for a first offence, six hundred dollars for a second offence, and one

thousand dollars for a third or subsequent offence, and subsequent to such a conviction if the offence is a continuing one, to a further fine of twenty dollars for every day on which the offence has continued.

(3) Where an offence is committed by a person by reason of his failure to comply with any provision of this Act by or under which he is required or directed to do anything within a particular period, that offence, without affecting the operation of subsection (2) of this section, for the purposes of that subsection shall be deemed to continue so long as the thing so required or directed to be done by him remains undone, notwithstanding that the particular period has elapsed.

Continuing
offence.

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

45. No prosecution for an offence against this Act shall be instituted without the consent in writing of the Chief Inspector.

Power to
prosecute
with con-
sent of
Chief
Inspector.

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

Regulations.
Amended by
No. 34 of
1978, s. 8.

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

- (a) prescribing fees payable under this Act and prescribing that different amounts of those fees be paid in respect of different classes of work or in respect of work done in different areas (whether the work is part of the same project or not) and prescribing the method of assessment of such fees and all other matters necessary or convenient to be prescribed in relation to the assessment or payment of those fees;
- (b) prescribing penalties, not exceeding a fine of four hundred dollars, in respect of a breach of any of the regulations; and
- (c) prescribing qualifications to be held under this Act by any persons doing any work specified therein and defining those persons.

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

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

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

SCHEDULE.

Inspection of Scaffolding Act, 1924.
Inspection of Scaffolding Act Amendment Act, 1926.
Inspection of Scaffolding Act Amendment Act, 1930.
Inspection of Scaffolding Act Amendment Act, 1939.
Inspection of Scaffolding Act Amendment Act, 1945.
Inspection of Scaffolding Act Amendment Act, 1950.
Inspection of Scaffolding Act Amendment Act, 1954.
Inspection of Scaffolding Act Amendment Act, 1955.
Inspection of Scaffolding Act Amendment Act, 1962.
