



Australian Capital Territory

Occupational Health and Safety Act 1989

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About this republication

The republished law

This is a republication of the *Occupational Health and Safety Act 1989* effective from 29 March 2001 to 11 September 2001.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
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Editorial changes

The *Legislation (Republication) Act 1996*, part 3, division 2 authorised the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation (Republication) Act 1996*, s 14 and s 16). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

In preparing this republication, amendments have not been made under section 13.

As in force on
29 March 2001



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As in force on
29 March 2001



Australian Capital Territory

Occupational Health and Safety Act 1989

An Act to promote and improve standards of occupational health, safety
and welfare and for related purposes

PART 1—PRELIMINARY

1 Short title

This Act may be cited as the *Occupational Health and Safety Act 1989*.

3 Objects

The objects of this Act are—

- (a) to secure the health, safety and welfare of employees at work; and
- (b) to protect persons at or near workplaces from risks to health or safety arising out of the activities of employees at work; and
- (c) to promote an occupational environment for employees that is adapted to their health and safety needs; and
- (d) to foster a cooperative consultative relationship between employers and employees on the health, safety and welfare of employees at work.

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5 Interpretation

(1) In this Act:

Note A definition applies except so far as the contrary intention appears (see *Interpretation Act 1967*, s 11G).

appointed member means a member appointed under paragraph 13 (1) (a), (b) or (c).

approved code of practice means—

- (a) a code of practice that is approved under section 87; and
- (b) such a code of practice, as varied in accordance with any variation that is approved under section 87.

associated law means any of the following laws:

- (a) the *Dangerous Goods Act 1975*;
- (b) the *Fuels Control Act 1979*;
- (c) the *Machinery Act 1949*;
- (d) the *Road Transport Reform (Dangerous Goods) Act 1995* (Cwlth);
- (e) the *Scaffolding and Lifts Act 1912*;
- (f) the *Workers' Compensation Act 1951*;
- (g) the *Workers' Compensation Supplementation Fund Act 1980*;
- (h) any other Act or subordinate law, or provision of an Act or subordinate law, prescribed under the regulations.

chairperson means the chairperson of the council.

commencement date, in relation to a provision of this Act, means the date of commencement of that provision.

commission means the Australian Industrial Relations Commission.

commissioner means the Occupational Health and Safety Commissioner appointed under section 25A.

council means the Occupational Health and Safety Council established by section 9.

Crimes Act means the *Crimes Act 1900*.

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dangerous occurrence means an occurrence, at a workplace, that is declared by the regulations to be a dangerous occurrence.

deputy chairperson means the deputy chairperson of the council.

designated work group means—

- (a) a group of employees established as a designated work group under subsection 37 (1) or (2) or 38 (1) or (2);
- (b) such a group as varied under subsection 37 (4) or 38 (3).

determined fee means the fee determined under section 96A for the purposes of the provision in which the expression occurs.

employee means a natural person who is employed under a contract of service.

employer means a person who employs a natural person under a contract of service.

health and safety committee means a health and safety committee established under the regulations.

health and safety representative means a health and safety representative selected in accordance with section 40.

improvement notice means a notice in force under subsection 76 (1).

injury includes—

- (a) the contraction of a disease; and
- (b) the aggravation, acceleration or recurrence of an injury or a disease.

inspector means an inspector under section 70.

involved union means—

- (a) in relation to an employee of an employer—a registered union of which the employee is a member, being an employee who is qualified to be such a member by virtue of the work that the employee performs as an employee of the employer; or
- (b) in relation to a designated work group—a registered union of which an employee included in the group is a member, being an employee who is qualified to be such a member by virtue of the work the employee performs as an employee included in the group.

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occupier includes—

- (a) in relation to a workplace—a person who is, or is reasonably believed to be, in charge of the performance of work at the workplace; and
- (b) in relation to any other premises—a person who is, or is reasonably believed to be, in charge of the premises.

plant includes any machinery, equipment or tool and any component thereof or accessory thereto.

premises includes—

- (a) a structure, building, aircraft, vehicle or vessel; and
- (b) a place (whether enclosed or built upon or not); and
- (c) a part of premises (including premises of a kind referred to in paragraph (a) or (b)).

president means the president of the commission.

prohibition notice means a notice in force under subsection 77 (1).

provisional improvement notice means a notice in force under subsection 51 (1).

review authority means the Occupational Health and Safety Review Authority established by section 80.

self-employed person means a natural person who works for gain or reward otherwise than as an employee (whether or not he or she employs another person).

work means work as an employee or as a self-employed person.

workplace means any premises where employees or self-employed persons work.

(2) For the purposes of this Act and the regulations, an employee shall be taken to be at work at all times while the employee is at his or her workplace for the purpose of performing work in connection with an undertaking carried on by his or her employer.

(3) A reference in this Act to an employee of an employer at a particular workplace shall be read as a reference to an employee who works at that workplace in the capacity of an employee of that employer.

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- (4) A reference in this Act to—
- (a) an offence under this Act or the regulations; or
 - (b) a contravention of this Act or the regulations that constitutes an offence under this Act or the regulations;

shall, unless the context requires otherwise, be read as including a reference to an offence under or by virtue of a provision of Part 8 of the Crimes Act that relates to the offence referred to in paragraph (a) or (b), as the case requires.

- (5) For the purposes of this Act and the regulations—
- (a) a sole owner, joint owner or part owner of any workplace, plant, substance or thing; and
 - (b) the lessor of any leased workplace; and
 - (c) the lessee of any leased workplace; and
 - (d) the hirer of any plant, substance or thing under a hire-purchase agreement or a contract of hire; and
 - (e) any other person who has a right of immediate possession to any workplace, plant, substance or thing;

has a prescribed interest therein.

6 Voluntary workers etc

- (1) The Minister may, by notice in the Gazette, declare that—
- (a) a person who is included in a specified class of persons and who, otherwise than under a contract of service or a contract for services, engages in activities or performs acts at the request or direction, or for the benefit, of another person specified in the declaration shall, for the purposes of this Act and the regulations, be taken to be employed by that other person; and
 - (b) the work of the firstmentioned person shall, for those purposes, be taken to be constituted by the performance by that person of such acts as are specified in the declaration;

and such a declaration has effect accordingly.

- (2) A declaration under subsection (1) is a disallowable instrument.

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7 Exemptions

(1) The Minister may by instrument exempt—

- (a) an employer; or
- (b) a class of employers; or
- (c) an employee; or
- (d) a class of employees; or
- (e) a workplace; or
- (f) a class of workplaces;

from the application of all or any of the provisions of this Act or the regulations.

(2) An instrument made under subsection (1) is a disallowable instrument.

(3) Where the Minister—

- (a) receives an application for an exemption; and
- (b) makes a decision refusing to grant the exemption to a person referred to in paragraph (1) (a), (c) or (e);

the Minister shall, within 28 days of making the decision, give written notice of the decision to the applicant.

(4) Application may be made to the administrative appeals tribunal for review of a decision referred to in paragraph (3) (b).

8 Service of documents etc on employers

(1) Where a provision of this Act or the regulations requires or permits a document to be given to an employer in relation to an activity undertaken by or on behalf of the employer, the document shall be taken to have been so given to the employer if it is given to the person who is, or is reasonably believed to be, in charge of that activity.

(2) Where a provision of this Act or the regulations requires or permits anything (other than the service of a document) to be done in relation to an employer in relation to an activity undertaken by or on behalf of the employer, the thing shall be taken to have been so done in relation to the employer if it is done in relation to the person who is, or is reasonably believed to be, in charge of that activity.

PART 2—OCCUPATIONAL HEALTH AND SAFETY COUNCIL

Division 1—Establishment, functions and powers

9 Establishment

There is established by this section a council by the name of the Occupational Health and Safety Council.

10 Functions

- (1) The council has the following functions:
- (a) to advise the Minister on matters relating to—
 - (i) occupational health and safety; or
 - (ii) workers' compensation; or
 - (iii) occupational rehabilitation;
 - (b) to inquire into and report to the Minister on matters referred to the council by the Minister in relation to—
 - (i) occupational health and safety; or
 - (ii) workers' compensation; or
 - (iii) occupational rehabilitation;
 - (c) such other functions as are prescribed.
- (2) Without limiting the generality of paragraph (1) (a), the matters on which the council may advise the Minister include the following matters:
- (a) the operation of this Act, the regulations and the associated laws;
 - (b) the approval of codes of practice, and the variation of codes of practice, under section 87;
 - (c) the provision of education and training in relation to occupational health and safety;
 - (d) the promotion of occupational health and safety;
 - (e) the operation of the *Workers' Compensation Act 1951* and regulations under that Act;
 - (f) the approval of a protocol or an amendment to a protocol under section 15F of the *Workers' Compensation Act 1951*;

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- (g) the operation of legislation, including legislation of the Commonwealth, that governs occupational rehabilitation or workers' compensation in relation to public employees;
- (h) the provision of education or training in relation to workers' compensation or occupational rehabilitation;
- (l) the promotion of occupational rehabilitation.

11 Powers

The council has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

Division 2—Constitution and meetings

13 Membership

- (1) The council shall consist of—
 - (a) 4 members appointed by the Minister after consultation with such persons or bodies as the Minister considers represent the interests of employees; and
 - (b) 4 members appointed by the Minister after consultation with such persons or bodies as the Minister considers represent the interests of employers; and
 - (c) 3 other members appointed by the Minister; and
 - (d) the commissioner.
- (2) The performance of the functions, or the exercise of the powers, of the council is not affected only by reason of a vacancy or vacancies in the membership of the council.

14 Terms of appointment

- (1) The appointed members of the council shall be appointed as part-time members.
- (2) An appointed member of the council holds office—
 - (a) for such period not exceeding 3 years as is specified in the instrument of appointment; and

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- (b) on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined in writing by the Minister.

16 Chairperson and deputy chairperson

The Minister shall appoint—

- (a) the chairperson of the council; and
- (b) the deputy chairperson of the council;

from the members of the council.

18 Leave of absence

(1) The Minister may grant leave of absence to the chairperson or deputy chairperson on such terms and conditions as to remuneration or otherwise as the Minister determines.

(2) The council may grant leave of absence to a member (other than the chairperson or deputy chairperson) on such terms and conditions as to remuneration or otherwise as the council determines.

19 Disclosure of interest

(1) A member of the council who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the council shall, as soon as practicable after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the council.

(2) A disclosure shall be recorded in the minutes of the meeting and, unless the council otherwise determines, the member shall not—

- (a) be present during any deliberation of the council with respect to that matter; or
- (b) take part in any decision of the council with respect to that matter.

(3) A member referred to in subsection (2) shall not—

- (a) be present during any deliberation of the council for the purpose of considering whether to make a determination under that subsection in relation to that member; or
- (b) take part in the making by the council of such a determination.

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20 Resignation

An appointed member of the council may resign his or her office by writing signed by the member and delivered to the Minister.

21 Termination of appointment

(1) The Minister may terminate the appointment of an appointed member of the council for misbehaviour or physical or mental incapacity.

(2) Where the Minister believes on reasonable grounds that—

- (a) a member of the council referred to in paragraph 13 (1) (a) no longer represents the interests of employees; or
- (b) a member of the council referred to in paragraph 13 (1) (b) no longer represents the interests of employers;

the Minister may terminate the appointment of the member.

(3) If an appointed member of the council—

- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for the benefit of those creditors; or
- (b) is absent, except on leave granted under section 18, from 3 consecutive meetings of the council; or
- (c) fails, without reasonable excuse, to comply with an obligation imposed by section 19; or
- (d) is convicted, in Australia or elsewhere, of an offence punishable by imprisonment for 12 months or longer;

the Minister shall terminate the appointment of the member.

22 Acting members

(1) The Minister may appoint a person to act as an appointed member of the council, other than the chairperson or deputy chairperson—

- (a) during a vacancy in the office of the member, whether or not an appointment has previously been made to the office; or
- (b) during any period or during all periods when the member is absent from duty or from the Territory or is, for any reason, unable to perform the duties of the office;

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but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

(2) Before appointing a person to act as a member of the council referred to in paragraph 13 (1) (a), the Minister shall—

- (a) consult with such persons or bodies as the Minister considers represent the interests of employees; and
- (b) have regard to the relevant recommendations of those persons or bodies in relation to the appointment.

(3) Before appointing a person to act as a member of the council referred to in paragraph 13 (1) (b), the Minister shall—

- (a) consult with such persons or bodies as the Minister considers represent the interests of employers; and
- (b) have regard to the relevant recommendations of those persons or bodies in relation to the appointment.

(4) Anything done by or in relation to a person purporting to act under subsection (1) is not invalid on the ground that—

- (a) the occasion for the person's appointment had not arisen; or
- (b) there is a defect or irregularity in connection with the person's appointment; or
- (c) the person's appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.

23 Convening meetings

(1) The chairperson—

- (a) may convene such meetings of the council as the chairperson considers necessary for the efficient performance of its functions; and
- (b) shall, on receipt of a request in writing signed by not less than 4 other members of the council, convene a meeting of the council.

(2) Where the chairperson proposes to convene a meeting of the council, the chairperson shall, not later than 5 days before the date of the proposed meeting, give each member of the council a notice in writing specifying—

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- (a) the date, time and place of the meeting; and
- (b) the matters to be considered at the meeting.

(3) The Minister may convene a meeting of the council by notice in writing given to each of the members.

24 Procedure at meetings

(1) The chairperson shall preside at all meetings of the council at which the chairperson is present.

(2) Where the chairperson is not present at a meeting of the council, the deputy chairperson shall preside at the meeting.

(3) Where the chairperson and the deputy chairperson are both absent from a meeting of the council, the members present shall elect 1 of their number to preside at the meeting.

(4) Subject to section 23 and this section, the member presiding at a meeting of the council may give directions regarding the procedure to be followed in connection with the meeting.

(5) Subject to subsection (5A), at a meeting of the council, 7 members including—

- (a) 2 of the members referred to in paragraph 13 (1) (a); and
- (b) 2 of the members referred to in paragraph 13 (1) (b); and
- (c) 2 of the members referred to in paragraph 13 (1) (c);

constitute a quorum.

(5A) A paragraph of subsection (5) shall only be taken to be satisfied if at least 1 of the members required to be present by that paragraph is not an acting member.

(6) Questions arising at a meeting of the council shall be decided by a majority of the votes of members present and voting.

(7) The member presiding at a meeting of the council has a deliberative vote only.

(8) The council shall keep a record in writing of its proceedings.

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24A Immunity from suit

(1) No action, suit or proceeding lies against a person who is or has been a member of the council in relation to an act done or omitted to be done in good faith in the performance or purported performance of a function under this Act.

(2) Subsection (1) does not affect any liability that the Territory would, but for that subsection, have in respect of an act or omission referred to in that subsection.

Division 3—Advisory committees

25 Establishment

(1) The council may constitute such advisory committees as it thinks necessary to assist in the performance of its functions.

(2) The council shall, when requested to do so by the Minister, constitute an advisory committee to assist it in the performance of its functions in relation to any matter specified by the Minister concerning occupational health and safety.

(3) Subject to any direction by the council, an advisory committee may determine the manner in which it is to perform its functions.

**PART 2A—OCCUPATIONAL HEALTH AND SAFETY
COMMISSIONER**

25A Appointment

- (1) There shall be an Occupational Health and Safety Commissioner, who shall be appointed in writing by the Executive.
- (2) The commissioner holds office, subject to this Part, for the period (not exceeding 7 years) specified in the instrument of appointment, and is eligible for reappointment.

25B Functions

- (1) In addition to any other functions conferred on the commissioner by or under this Act, the commissioner has the following functions:
 - (a) to promote an understanding and acceptance of, and compliance with, this Act and the associated laws;
 - (b) to undertake research, and develop educational and other programs, for the purpose of promoting occupational health, safety and welfare;
 - (c) to review the laws of the Territory for the purpose of ascertaining whether any of those laws is inconsistent with this Act, and to report to the Minister on the results of the review;
 - (d) when requested to do so by the Minister, to examine any proposed law for the purpose of ascertaining whether the proposed law, if enacted, would be inconsistent with this Act, and to report to the Minister on the results of the examination;
 - (e) to advise the Minister on any matter relevant to the operation of this Act;
 - (f) such functions (if any) as are conferred on the commissioner by or under any other law of the Territory.
- (2) The commissioner has power to do all things that are necessary or convenient to be done in relation to the performance of the commissioner's functions.

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25C Resignation

The commissioner may resign by writing given to the Minister.

25D Retirement

The Executive may, with the consent of the commissioner, retire the commissioner on the ground of physical or mental incapacity.

25E Removal of commissioner

- (1) The Executive may remove the commissioner from office—
 - (a) if an address praying for his or her removal on the ground of misbehaviour or physical or mental incapacity has been presented to the Executive by the Legislative Assembly; or
 - (b) if the commissioner is absent from duty, except on leave granted by the Minister, for 14 consecutive days or for 28 days in any 12 months.
- (2) The Executive shall remove the commissioner from office if the commissioner—
 - (a) becomes bankrupt; or
 - (b) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (c) compounds with his or her creditors; or
 - (d) makes an assignment of his or her remuneration for the benefit of his or her creditors.
- (3) The commissioner shall not be removed from office except as provided by this section or section 25F.

25F Suspension and removal of commissioner

- (1) The Executive may suspend the commissioner from office on the ground of misbehaviour or physical or mental incapacity.
- (2) Where the Executive suspends the commissioner from office, the Minister shall cause a statement of the grounds of the suspension to be laid before the Legislative Assembly within 7 sitting days after the suspension.
- (3) Where a statement referred to in subsection (2) has been laid before the Legislative Assembly, the Legislative Assembly may, within 15 sitting

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days after the day on which the statement has been laid before it, by resolution, declare that the commissioner should be removed from office.

(4) If the Legislative Assembly passes a resolution referred to in subsection (3), the Executive shall remove the commissioner from office.

(5) If, at the end of 15 sitting days after the day on which the statement has been laid before it, the Legislative Assembly has not passed such a resolution, the suspension terminates.

(6) The commissioner may not be suspended from office except as provided by this section.

25G Ministerial directions

(1) The Minister may, by instrument, give directions to the commissioner in relation to the performance of his or her functions, either generally or in relation to a particular matter.

(2) The commissioner shall comply with a direction given under subsection (1).

(3) The Minister shall cause a copy of any direction under subsection (1) to be tabled in the Legislative Assembly within 5 sitting days after it is given to the commissioner.

(4) The Territory must pay to the commissioner the reasonable costs of complying with a direction.

(5) The amount payable is an amount agreed between the commissioner and the Minister or, failing agreement, determined by the Chief Minister.

25H Acting commissioner

(1) The Minister may appoint a person to act as commissioner—

- (a) during a vacancy in the office of commissioner (whether or not an appointment has previously been made to that office); or
- (b) during any period, or during all periods, when the commissioner is or is expected to be absent from duty or from the Territory or is, for any reason, unable to perform the duties of office; or

but a person appointed to act during a vacancy shall not continue to act for more than 12 months.

(2) Anything done in good faith by or in relation to a person purporting to act in the office of commissioner is not in doubt merely because—

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- (a) the occasion for the appointment had not arisen; or
- (b) there was a defect or irregularity in connection with the appointment; or
- (c) the appointment had ceased to have effect; or
- (d) the occasion to act had not arisen or had ceased.

25I Staff

- (1) The staff assisting the commissioner shall be employed under the *Public Sector Management Act 1994*.
- (2) The *Public Sector Management Act 1994* applies in relation to the management of the staff assisting the commissioner.
- (3) The commissioner has all the powers of a chief executive in relation to the staff assisting him or her as if the staff were employed in a department under the control of the commissioner.

25J Delegation

The commissioner may, in writing, delegate to a member of the staff assisting the commissioner any of the commissioner's powers or functions under a law of the Territory, other than the commissioner's powers under section 83.

25K Application of Financial Management Act 1996

Unless the contrary intention appears, the provisions of Parts 2 to 5 of the *Financial Management Act 1996* apply to the commissioner as if—

- (a) a reference in those provisions to a department included a reference to the commissioner and the staff assisting the commissioner; and
- (b) a reference in those provisions to the responsible chief executive included a reference to the commissioner.

**PART 3—DUTIES RELATING TO OCCUPATIONAL HEALTH
AND SAFETY**

27 Duties of employers in relation to employees

(1) An employer shall take all reasonably practicable steps to protect the health, safety and welfare at work of the employer's employees.

Maximum penalty: 250 penalty units.

(2) Without limiting the generality of subsection (1), an employer contravenes that subsection if the employer fails to take all reasonably practicable steps—

- (a) to provide and maintain a working environment (including plant and systems of work)—
 - (i) that is safe for the employer's employees and without risk to their health; and
 - (ii) that provides adequate facilities for their welfare at work; or
- (b) in relation to any workplace under the employer's control—
 - (i) to ensure that the workplace is safe for the employees and without risk to their health; and
 - (ii) to provide and maintain a means of access to and egress from the workplace that is safe for the employees and without risk to their health; or
- (c) to ensure the safety at work of, and the absence of risks at work to the health of, the employees in connection with the use, handling, storage or transport of plant or substances; or
- (d) to provide to the employees the information, instruction, training and supervision necessary to enable them to perform their work in a manner that is safe and without risk to their health; or
- (e) to develop and maintain a policy relating to occupational health and safety that—
 - (i) enables effective cooperation between the employer and the employees in promoting and developing measures to ensure the employees' health, safety and welfare at work; and

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- (ii) provides adequate mechanisms for reviewing the effectiveness of those measures; or
 - (f) to bring to the attention of the employees the measures developed as a result of the policy referred to in paragraph (2) (e) to ensure their health, safety and welfare at work; or
 - (g) to take appropriate action to monitor the employees' health and safety at work and the conditions of the workplaces under the employer's control; or
 - (h) to maintain appropriate information and records relating to the employees' health and safety; or
 - (i) to provide appropriate medical and first-aid services for the employees.
- (3) A policy of the kind referred to in paragraph (2) (e) shall be developed and maintained in consultation with—
- (a) any health and safety committee established in respect of the employer's employees; or
 - (b) if no such committee exists in respect of the employer's employees—those employees or any involved union.

28 Duty of employers in relation to third parties

An employer shall take all reasonably practicable steps to ensure that persons at or near a workplace under the employer's control, who are not the employer's employees, are not exposed to risk to their health or safety arising from the conduct of the employer's undertaking.

Maximum penalty: 250 penalty units.

29 Duties of persons in control of workplaces

A person who has, to any extent, control of—

- (a) a workplace; or
- (b) a means of access to, or egress from, a workplace; or
- (c) plant or a substance at a workplace;

shall take all reasonably practicable steps to ensure that it is safe and without risk to health.

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Maximum penalty: 250 penalty units.

30 Duties of employees

(1) An employee shall, at all times while at work, take all reasonably practicable steps—

- (a) to ensure that the employee does not take any action, or make any omission, that creates a risk, or increases an existing risk, to the health or safety of the employee, or of other persons (whether employees or not) at or near the place at which the employee is at work; and
- (b) in respect of any duty or obligation imposed on the employee's employer, or on any other person, by or under this Act or the regulations—to cooperate with the employer, or that other person, to the extent necessary to enable the employer or other person to fulfill that duty or obligation; and
- (c) to use equipment, in accordance with any instructions given by the employee's employer consistent with its safe and proper use, that is—
 - (i) supplied to the employee by the employer; and
 - (ii) necessary to protect the health and safety of the employee or of other persons (whether employees or not) at or near the place at which the employee is at work.

Maximum penalty: 250 penalty units.

(2) Nothing in subsection (1) shall be taken to imply that the choice, or manner of use, of equipment of the kind referred to in paragraph (1) (c) is not a matter that may, consistently with this Act, the regulations and the associated laws, be agreed upon—

- (a) between the employer and any involved union in relation to employees of that employer; or
- (b) by a health and safety committee in respect of the employees of the employer.

(3) Where an agreement of the kind referred to in paragraph (2) (a) (whether or not entered into before the commencement date) or of the kind referred to in paragraph (2) (b) provides a process for choosing equipment of a particular kind that is to be provided by the employer, action shall not

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be taken against an employee of the employer for failure to use equipment of that kind that is so provided, unless the equipment has been chosen in accordance with that process.

(4) Where an agreement of the kind referred to in paragraph (2) (a) (whether or not entered into before the commencement date) or of the kind referred to in paragraph (2) (b) provides a process for determining the manner of use of equipment of a particular kind, action shall not be taken against an employee of the employer for failure to use, in the manner required by the employer, equipment of that kind that is so provided, unless the manner has been determined in accordance with that process.

31 Duties of self-employed persons

A self-employed person shall take all reasonably practicable steps to ensure that the health and safety of other persons (not being his or her employees) are not adversely affected by work undertaken by or for the self-employed person.

Maximum penalty: 250 penalty units.

32 Duties of manufacturers in relation to plant and substances

(1) A manufacturer of any plant that the manufacturer ought reasonably to expect will be used by employees at work shall take all reasonably practicable steps—

- (a) to ensure that the plant is so designed and constructed as to be, when properly used, safe for employees and without risk to their health; and
- (b) to carry out, or cause to be carried out, the research, testing or examination necessary in order to discover, and to eliminate or minimise, any risk to the health or safety of employees that may arise from the use of the plant; and
- (c) to make available to an employer, in connection with the use of the plant by employees at work, adequate information concerning—
 - (i) the use for which it was designed and tested; and
 - (ii) any conditions necessary to ensure that, when put to the use for which it was designed and tested, it will be safe for employees and without risk to their health; and

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- (iii) the proper maintenance of the plant.

Maximum penalty: 250 penalty units.

(2) A manufacturer of any substance that the manufacturer ought reasonably to expect will be used by employees at work shall take all reasonably practicable steps—

- (a) to ensure that the substance is so manufactured as to be, when properly used, safe for employees and without risk to their health; and
- (b) to carry out or cause to be carried out, the research, testing or examination necessary in order to discover, and to eliminate or minimise, any risk to the health and safety of employees that may arise from the use of the substance; and
- (c) to make available to an employer, in connection with the use of the substance by employees at work, adequate information concerning—
 - (i) the use for which it was manufactured and tested; and
 - (ii) details of its composition; and
 - (iii) any conditions necessary to ensure that, when put to the use for which it was manufactured and tested, it will be safe for employees and without risk to their health; and
 - (iv) the first-aid and medical procedures that should be followed if the substance causes injury.

Maximum penalty: 250 penalty units.

(3) Where—

- (a) plant or a substance is brought into the Territory at any time by a person who is not the manufacturer of the plant or substance; and
- (b) at that time the manufacturer of the plant or substance does not have a place of business in the Territory;

the firstmentioned person shall, for the purposes of this section, be taken to be the manufacturer of the plant or substance.

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33 Duties of suppliers in relation to plant and substances

(1) A supplier of any plant or substance that the supplier ought reasonably to expect will be used by employees at work shall take all reasonably practicable steps—

- (a) to ensure that, at the time of supply, the plant or substance is in such condition as to be, when properly used, safe for employees and without risk to their health; and
- (b) to carry out, or cause to be carried out, the research, testing or examination necessary in order to discover, and to eliminate or minimise, any risk to the health or safety of employees that may arise from the condition of the plant or substance; and
- (c) to make available to an employer, in connection with the use of the plant or substance by employees at work, adequate information concerning—
 - (i) the condition of the plant or substance at the time of the supply; and
 - (ii) any risk to the health and safety of employees to which the condition of the plant or substance may give rise unless it is properly used; and
 - (iii) the steps that need to be taken in order to eliminate such a risk; and
 - (iv) in the case of plant—the proper maintenance of the plant; and
 - (v) in the case of a substance—the first-aid and medical procedures that should be followed in the event of the substance causing injury to an employee.

Maximum penalty: 250 penalty units.

(2) For the purposes of subsection (1), where a person (the *ostensible supplier*) supplies to an employer any plant or substance that is to be used by employees at work and the ostensible supplier—

- (a) carries on the business of financing the acquisition or the use of goods by other persons; and
- (b) has, in the course of that business, acquired an interest in the plant or substance solely for the purpose of financing its acquisition by

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the employer from a third person or its provision to the employer by a third person; and

- (c) has not taken possession of the plant or substance or has taken possession of the plant or substance solely for the purpose of passing possession of the plant or substance to that employer;

the reference in subsection (1) to a supplier shall, in relation to the plant or substance referred to in this subsection, be read as a reference to the third person and not as a reference to the other ostensible supplier.

34 Duties of persons erecting or installing plant in a workplace

A person who erects or installs any plant in a workplace for the use of employees at work shall take all reasonably practicable steps to ensure that the plant is not erected or installed in such a manner that it is unsafe for the employees who use the plant or constitutes a risk to their health.

Maximum penalty: 250 penalty units.

35 Reliance on information supplied or results of research

(1) Without limiting the generality of subsection 27 (1) or section 28 or 29, a person required under that provision to take reasonably practicable steps in relation to the use of plant or a substance shall be taken to have taken such steps in accordance with that provision, in relation to the use of any plant or substance, to the extent that—

- (a) the person ensured, as far as is reasonably practicable, that the use of the plant or substance was in accordance with—
 - (i) information supplied by the manufacturer or the supplier of the plant or substance; or
 - (ii) an approved code of practice;
relating to the health and safety in the use of the plant or substance; and
- (b) it was reasonable for the person to rely on that information.

(2) Without limiting the generality of subsection 32 (1) or (2) or 33 (1), a person required under that subsection to take reasonably practicable steps in relation to the carrying out of research, testing or examination of plant or a substance, shall be taken to have taken such steps in accordance with that subsection, in relation to the carrying out of any research, testing or examination, to the extent that—

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- (a) the research, testing or examination has already been carried out otherwise than by, or on behalf of, the person; and
- (b) it was reasonable for the person to rely on that research, testing or examination.

(3) Without limiting the generality of section 34, a person required under that section to take reasonably practicable steps in relation to the erection or installation of plant in a workplace, shall be taken to have taken such steps in accordance with that section, in relation to any erection or installation of plant, to the extent that—

- (a) the person ensured, as far as is reasonably practicable, that the erection or installation was in accordance with—
 - (i) information supplied by the manufacturer or the supplier of the plant; or
 - (ii) an approved code of practice;
relating to the erection or installation of the plant in a manner that ensures the health and safety of employees who use the plant; and
- (b) it was reasonable for the person to rely on that information.

35A Commencement of prosecution in Magistrates Court

(1) If a coroner's inquest or inquiry is held and it appears from the coroner's report or from proceedings at the inquest or inquiry that an offence has been committed against this Part, a prosecution for the offence may be begun in the Magistrates Court at any time before the third anniversary of the day the findings were recorded, or the report was made, whichever occurs later.

(2) Subsection (1) applies to an offence against this Part whether it was committed before or after the commencement of this section.

PART 4—WORKPLACE ARRANGEMENTS

Division 1—Health and safety representatives

36 Small employers not affected

This Division applies only in relation to an employer who employs 10 or more employees.

37 Work groups designated by employers

(1) A person who is an employer on the commencement date shall—

- (a) not later than 14 days after that date; and
- (b) by notice in accordance with subsection (10);

established designated work groups in respect of his or her employees.

(2) A person who, after the commencement date, becomes an employer shall—

- (a) not later than 14 days after becoming an employer; and
- (b) by notice in accordance with subsection (10);

establish designated work groups in respect of his or her employees.

(3) A person who, without reasonable excuse, contravenes subsection (1) or (2) commits an offence.

Maximum penalty: 10 penalty units.

(4) An employer may vary designated work groups by notice in accordance with subsection (10).

(5) Designated work groups shall be so established or varied that the manner in which employees are grouped—

- (a) best and most conveniently enables the employees' interests relating to occupational health and safety to be represented and safeguarded; and
- (b) best takes account of the need for any health and safety representative selected for a designated work group to be accessible to each employee included in the group.

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(6) In determining the manner of grouping employees in accordance with subsection (5), an employer shall have regard, in particular to—

- (a) the number of employees; and
- (b) the nature of each type of work performed by the employees; and
- (c) the number and grouping of the employees who perform the same or similar types of work; and
- (d) the workplaces, and the areas within the workplaces, where each type of work is performed; and
- (e) the nature of any risks to health and safety at the workplaces; and
- (f) any arrangements at the workplaces relating to overtime or shift work.

(7) An employer shall not establish or vary a designated work group without consulting—

- (a) each involved union in relation to the employees; and
- (b) if there is no such involved union—such of the employees as the employer considers appropriate;

in relation to the establishment or variation of the designated work group.

(8) Designated work groups for employees shall be so established or varied that each of the employees is included in a designated work group.

(9) Subject to subsections (5), (6) and (7), all of an employer's employees may be included in 1 designated work group.

(10) A notice establishing a designated work group under subsection (1) or (2), or varying a designated work group under subsection (4), shall—

- (a) describe the group and the employees, or the class of employees, who are included in that group; and
- (b) be displayed in each workplace under the employer's control as will allow all of the employees in the group to be notified of its establishment or variation.

38 Work groups designated by commissioner

(1) Where an employer to whom subsection 37 (1) or (2) applies has failed to establish designated work groups in respect of his or her

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employees within the time required by that subsection, the commissioner may establish designated work groups in respect of those employees.

(2) The commissioner may establish designated work groups in lieu of those established by an employer, upon receipt of a written request to do so, signed by not less than 50% of the employees included in all of the groups established by the employer.

(3) The commissioner may vary a designated work group established by an employer upon receipt of a written request to do so, signed by not less than 50% of the employees included in the group.

(4) The establishment of a designated work group under subsection (1) or (2) or the variation of a designated work group under subsection (3) shall be by notice in writing given to the employer concerned, describing each of the groups established or varied and the employees or class of employees who are included in that group.

(5) In the exercise of a power under subsection (1), (2) or (3), the commissioner shall have regard to the matters specified in paragraphs 37 (6) (a) to (f) and shall consult—

- (a) each involved union in relation to the employees affected; or
- (b) if there is no such involved union—such of the employees affected as the commissioner considers appropriate.

(6) Where a designated work group is established under subsection (1) or (2) or varied under subsection (3), the employer to whom notice under subsection (4) is given shall, not later than 14 days after the date of the notice, cause a notice of the establishment or variation to be displayed at such workplaces under the employer's control as will allow all of the employees in the group to be notified of its establishment or variation.

(7) A person who, without reasonable excuse, contravenes subsection (6) is guilty of an offence punishable, on conviction, by a fine not exceeding 1 penalty unit.

39 Work groups on construction sites

(1) In this section:

building and construction work has the same meaning as in the *Long Service Leave (Building and Construction Industry) Act 1981*.

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construction site means a workplace at which building and construction work is, or is to be, performed.

- (2) Where—
- (a) a person (the **principal contractor**) engages but does not employ another person (the **subcontractor**) to carry out building and construction work for the principal contractor on a construction site; and
 - (b) the subcontractor employs another person (the **worker**) to perform that work;

the commissioner may, on application by the principal contractor, declare that this section applies to that site.

(3) The commissioner shall not make a declaration unless the commissioner believes on reasonable grounds—

- (a) that—
 - (i) the principal contractor has, or will have, substantial control over the performance of the worker's work on the construction site; or
 - (ii) but for an agreement between the principal contractor and the subcontractor, the principal contractor would have, or would have had, such control; and
- (b) that—
 - (i) the principal contractor has, or will have, substantial control over the performance of other building and construction work on the site; or
 - (ii) but for an agreement between the principal contractor or any other subcontractor, the principal contractor would have, or would have had, such control.

(4) An application for a declaration shall be made in writing and given to the commissioner.

(5) A declaration shall be made by notice in the Gazette.

(6) While a declaration is in force—

- (a) Divisions 1, 2 and 4 of Part 4 have effect in relation to the principal contractor and the worker—

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- (i) as if a contract of employment existed between them in respect of the performance of the work by the worker on the construction site; and
 - (ii) as if a reference in any provision of those Divisions (other than in subsection 45 (3), paragraph 48 (1) (b) and subsection 59 (4)) to an employer or employee were a reference to the principal contractor or worker, respectively;
- (b) sections 7, 8, and 82 and the Schedule have effect in relation to the principal contractor and the worker as if, in respect of the performance of the work by the worker on the construction site, a reference in any of those sections or the Schedule to an employer or employee included in a reference to the principal contractor or worker, respectively; and
- (c) for the purposes of Divisions 1 and 4 of Part 4 (other than subsection 45 (3), section 48 and subsection 59 (4)), the subcontractor shall not be taken to be the worker's employer in respect of the performance of the work by the worker on the construction site.

40 Selection

- (1) There shall not be more than 1 health and safety representative for a designated work group.
- (2) The health and safety representative for a designated work group shall be an employee included in the group who has been duly selected by the employees in the group to be its health and safety representative.
- (3) The regulations may make provision in relation to the selection of health and safety representatives, and where such regulations are in force, a health and safety representative shall be selected only in accordance with the regulations.
- (4) A person selected in accordance with subsection (2) as a health and safety representative for a designated work group shall have no power as a health and safety representative until the person has given the relevant employer a notice in writing of his or her selection.
- (5) Subsection (4) does not apply to a person selected as a health and safety representative in accordance with regulations made for the purposes of subsection (3).

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(6) As soon as practicable after an employer is notified under subsection (4), the employer shall cause a notice that the person so selected is the health and safety representative for the designated work group to be displayed in a prominent place at such workplaces under the employer's control as will allow all of the employees in the group to be notified of the selection.

(7) A person who, without reasonable excuse, contravenes subsection (6) commits an offence.

Maximum penalty: 1 penalty unit.

41 Objections to selection

(1) This section has no effect if regulations made for the purposes of subsection 40 (3) are in force.

(2) Where—

- (a) a health and safety representative (the *current representative*) for a designated work group holds office otherwise than by virtue of an election conducted under this section; and
- (b) a notice of objection to the selection of the current representative, signed by—
 - (i) the employer of all the employees included in the designated work group; or
 - (ii) not less than 50% of the employees included in the designated work group;is lodged with the commissioner in accordance with subsection (3);

the commissioner shall conduct an election of a health and safety representative to replace the current representative.

(3) A notice of objection shall be lodged with the commissioner—

- (a) within 7 days after the day on which notice of the selection of the current representative was given to the employer concerned in accordance with subsection 40 (4); or
- (b) where the commissioner believes on reasonable grounds that the first reasonable opportunity to lodge the notice will not, or did not, arise within those 7 days—within such further period as the

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commissioner allows, whether before or after the expiration of the 7 days.

(4) Where a health and safety representative is elected at an election conducted under this section—

- (a) the commissioner shall, in writing, notify the employer concerned and the current representative of the election of the representative; and
- (b) the current representative shall cease to hold office on the date of the notice given to him or her under paragraph (a).

(5) As soon as practicable after the employer is notified under paragraph (4) (a), the employer shall cause a notice that the person so elected is the health and safety representative for the designated work group to be displayed in a prominent place at such workplaces under the employer's control as will allow all of the employees in the group to be notified of the election.

(6) A person who, without reasonable excuse, contravenes subsection (5) commits an offence.

Maximum penalty: 1 penalty unit.

42 Lists of health and safety representatives

(1) An employer shall prepare and keep up to date a list of all the health and safety representatives for designated work groups that consist of employees of the employer, and shall ensure that the list is at all reasonable times available for inspection by—

- (a) the employees; and
- (b) involved unions in relation to the designated work groups; and
- (c) inspectors.

(2) An employer who, without reasonable excuse, contravenes subsection (1) commits an offence.

Maximum penalty: 1 penalty unit.

43 Powers

For the purpose of promoting or ensuring the health and safety of employees in a designated work group at any workplace at which work is

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performed for the relevant employer by some or all of those employees, the health and safety representative for the group may—

- (a) inspect the whole or any part of such a workplace if—
 - (i) there has, in the immediate past, been an accident or a dangerous occurrence at the workplace; or
 - (ii) the health and safety representative believes on reasonable grounds that there is an immediate threat of an accident or dangerous occurrence at the workplace; or
 - (iii) the health and safety representative has given the employer reasonable notice of the inspection; and
- (b) accompany an inspector during any inspection of the workplace by the inspector (whether or not the inspection is conducted as a result of a request made by the health and safety representative); and
- (c) if there is no health and safety committee in respect of the employer's employees—represent the employees in the group in consultations with the employer concerning the development, implementation and review of measures to ensure the health and safety at work of the employees in the group; and
- (d) where there is a health and safety committee in respect of the employer's employees—examine any of the records of that committee; and
- (e) investigate complaints made by any of the employees in the group to the health and safety representative concerning the health and safety of any of the employees at work; and
- (f) with the consent of the employee concerned, be present at any interview, concerning health and safety at work, between an employee in the group and—
 - (i) an inspector; or
 - (ii) the employer or a person representing the employer; and
- (g) subject to section 44, obtain access to any information under the employer's control relating to risks to health and safety of any employee—
 - (i) at any workplace under the employer's control; or

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- (ii) arising from the conduct by the employer of an undertaking or from plant or substances used for the purposes of the undertaking; and
- (h) subject to section 44, obtain access to any information under the employer's control relating to the health and safety of any of the employer's employees.

44 Access to information

A health and safety representative is not entitled to obtain access to—

- (a) information in respect of which an employer is entitled to claim, and does claim, legal professional privilege; or
- (b) information of a confidential medical nature relating to a person who is or was an employee of an employer unless—
 - (i) the person has delivered to the employer a written authority permitting the health and safety representative to have access to the information; or
 - (ii) the information is in a form that does not identify the person or enable the identity of the person to be discovered.

45 Duties of employers

(1) The employer of the employees included in a designated work group for which there is a health and safety representative shall—

- (a) upon being requested to do so by the representative, consult with the representative on the implementation of changes at any workplace at which some or all of the employees in the group perform work for the employer, being changes that may affect the health or safety at work of the employees; and
- (b) in respect of a workplace at which some or all of the employees perform work for the employer—
 - (i) permit the health and safety representative to make such inspection of the workplace as the representative is entitled to make in accordance with paragraph 43 (1) (a), and to accompany an inspector during any inspection of the workplace by the inspector; and

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- (ii) where there is no health and safety committee in respect of the employer's employees at the workplace—upon being requested to do so by the health and safety representative, consult with the representative concerning the development, implementation and review of measures to ensure the health and safety at work of those employees; and
- (c) permit the health and safety representative to be present at any interview at which the representative is entitled to be present under paragraph 43 (1) (f); and
- (d) permit the health and safety representative, upon request, to have access to information to which the representative is entitled under paragraph 43 (1) (g) or (h); and
- (e) permit the representative to take such time off work, without loss of remuneration or other entitlements, as is necessary and reasonable to exercise the powers of a health and safety representative; and
- (ea) permit the representative to take such time off work, without loss of remuneration or other entitlements, as is necessary and reasonable to allow him or her to undertake a training program approved under the regulations; and
- (f) permit the health and safety representative to have access to such facilities—
 - (i) as are prescribed for the purposes of this paragraph; or
 - (ii) to which access is necessary and reasonable for the purposes of exercising the representative's powers.

Maximum penalty: 50 penalty units.

(2) An employer shall not permit a health and safety representative to have access to information of a confidential medical nature under the control of the employer, being information relating to a person who is or was an employee of the employer, unless—

- (a) the person has delivered to the employer a written authority permitting the representative to have access to the information; or
- (b) the information is in a form that does not identify the person or enable the identity of the person to be discovered.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

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- (3) Where—
- (a) a declaration under section 39 is in force in respect of a construction site; and
 - (b) a worker to whom the declaration relates is the health and safety representative for a designated work group established in respect of employees on site;

the subcontractor who employs the worker shall permit the worker to take such time off work, without loss of remuneration or other entitlements, as is necessary and reasonable to exercise the powers of a health and safety representative.

Maximum penalty: 10 penalty units.

46 Term of office

- (1) Subject to this Division, a health and safety representative for a designated work group holds office for such period, not exceeding 2 years, as is determined by the employees who are, from time to time, included in the group.
- (2) A person who ceases to hold office as a health and safety representative under this section is eligible for reselection.

47 Resignation etc

- (1) A person shall cease to be the health and safety representative for a designated work group if—
- (a) the person resigns as the health and safety representative; or
 - (b) the person ceases to be an employee included in the designated work group; or
 - (c) the person is disqualified under section 48.
- (2) A person may resign as the health and safety representative for a designated work group by notice in writing delivered to the relevant employer.

48 Disqualification

- (1) The commissioner may, upon application by—
- (a) the employer of the employees in a designated work group; or

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- (b) if a declaration under section 39 is in force in respect of a construction site—any employer who is a subcontractor to whom the declaration relates; or
- (c) any involved union in relation to a designated work group; or
- (d) if there is no involved union in relation to a designated work group—any employee in the group;

disqualify the health and safety representative for the group for a specified period not exceeding 5 years from being a health and safety representative for any designated work group.

(2) An application referred to in subsection (1) shall be in writing setting out the grounds on which the disqualification is sought.

(3) The commissioner shall not disqualify a health and safety representative unless the commissioner believes on reasonable grounds that—

- (a) action taken by the representative in the exercise or purported exercise of his or her powers under this Act or the regulations was taken—
 - (i) with the intention of causing harm to the employer or to an undertaking of the employer; or
 - (ii) unreasonably, capriciously or otherwise than for the purpose for which the power was conferred on the representative; or
- (b) the representative has intentionally used, or disclosed to another person, for a purpose that is not connected with the exercise of a power of a health and safety representative, information acquired from an employer.

(4) For the purpose of exercising the power under subsection (1), the commissioner shall have regard to—

- (a) the harm (if any) that was caused to the employer or to an undertaking of the employer as a result of the action of the representative; and
- (b) the past record of the representative in exercising the powers of a health and safety representative; and

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- (c) the effect (if any) on the public interest of the action of the representative; and
- (d) such other matters as the commissioner thinks relevant.

(5) Where the commissioner disqualifies a health and safety representative, the commissioner shall take all reasonably practicable steps to give notice in writing of the disqualification to the representative.

49 Liability

An action or other proceeding, civil or criminal, does not lie against a health and safety representative for or in relation to any act done, or omission made, in good faith in connection with his or her powers under this Act or the regulations.

50 Deputy health and safety representatives

(1) One deputy health and safety representative may be selected for each designated work group for which a health and safety representative has been selected.

(2) A deputy health and safety representative shall be selected in the same manner as a health and safety representative.

(3) Where the health and safety representative for a designated work group ceases to be the health and safety representative or is unable (because of absence or for any other reason) to exercise the powers of a health and safety representative—

- (a) the powers may be exercised by the deputy health and safety representative (if any) for the group; and
- (b) this Act (other than this section) and the regulations apply in relation to the deputy accordingly.

(4) The employer of the employees included in a designated work group for which there is a deputy health and safety representative shall permit the deputy to take such time off work, without loss of remuneration or other entitlements, as is necessary and reasonable to allow him or her to undertake a training program approved under the regulations.

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Division 2—Provisional improvement notices

51 Issue

(1) Where a health and safety representative for a designated work group believes on reasonable grounds that a person (the *responsible person*)—

- (a) is contravening a provision of this Act or the regulations; or
- (b) is likely to contravene a provision of this Act or the regulations;

being a contravention that affects, or that the health and safety representative believes on reasonable grounds is likely to affect, 1 or more employees included in the group, the representative may, by notice in writing given to the responsible person, require that person to rectify the matters or activities occasioning the contravention or likely contravention.

(2) A health and safety representative shall not give a provisional improvement notice to a person unless the representative believes on reasonable grounds that—

- (a) the representative has taken all reasonably practicable steps to consult with the responsible person concerning rectification by that person of the matters or activities occasioning the contravention or likely contravention; and
- (b) any further such steps are unlikely to result in the rectification of those matters or activities.

(3) A health and safety representative shall not issue a provisional improvement notice in relation to any matter that is the subject of an improvement notice or a prohibition notice.

(4) A provisional improvement notice shall—

- (a) specify the contravention that the health and safety representative believes is occurring or is likely to occur, and set out the reasons for that belief; and
- (b) specify a period of not less than 7 days commencing on the day after the day on which the notice is issued (being a period that is, in the representative's opinion, reasonable) within which the responsible person is to rectify the matters or activities to which the notice relates.

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(5) Notwithstanding paragraph (4) (b), a provisional improvement notice that relates to a matter in the building and construction industry may be so expressed as to require the responsible person to rectify the matters or activities to which the notice relates within the 24 hours commencing when the notice is given personally to the responsible person.

(6) In subsection (5):

building and construction industry has the same meaning as in the *Long Service Leave (Building and Construction Industry) Act 1981*.

(7) A provisional improvement notice may specify action that the responsible person is to take during the period specified in the notice.

(8) Where a health and safety representative gives a provisional improvement notice to a person, the representative shall take all reasonably practicable steps to give a copy of the notice—

- (a) to the commissioner; and
- (b) where the notice is given to an employee in connection with work performed by the employee for an employer—to that employer; and
- (c) where the notice relates to any workplace, plant, substance or thing in which a person, other than the responsible person or an employer referred to in paragraph (b), has a prescribed interest—to each such person; and
- (d) where the notice is given to a person (not being the employer concerned) who has a prescribed interest in any workplace, plant, substance or thing by reason of which the representative believes a contravention of this Act or the regulations has occurred or is likely to occur—to the employer of the employees who work in that workplace or who use that plant, substance or thing.

Maximum penalty: 1 penalty unit.

(9) Before the end of the period specified in a provisional improvement notice, the health and safety representative who issued the notice may, by notice in writing given to the responsible person, extend the period within which the person is to take action in accordance with the notice.

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52 Display

(1) Where a provisional improvement notice has been given to an employer, the employer shall—

- (a) notify each employee whose work is affected by the contravention to which the notice relates of the fact of the issue of the notice; and
- (b) while the notice remains in force—cause a copy to be displayed in a prominent place at or near each workplace at which the work to which the notice relates is usually performed.

(2) A person who, without reasonable excuse, contravenes subsection (1) commits an offence.

Maximum penalty: 10 penalty units.

53 Compliance

The responsible person to whom a provisional improvement notice is given shall, subject to section 54—

- (a) ensure that, to the extent to which the notice relates to any matter over which the person has control, the notice is complied with; and
- (b) shall take such steps as are reasonably practicable to inform the health and safety representative who issued the notice of the action taken to comply with the notice.

Maximum penalty: 100 penalty units.

54 Revocation

(1) Where a health and safety representative believes on reasonable grounds that the responsible person to whom the representative has given a provisional improvement notice has complied with section 53 in relation to that notice, the representative shall, by notice in writing given to the person, revoke the provisional improvement notice.

(2) Where a health and safety representative revokes a provisional improvement notice, the representative shall give a copy of the notice of revocation to the commissioner as soon as practicable.

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55 Review

(1) The responsible person in relation to whom a provisional improvement notice is in force or any other person (other than the commissioner) to whom a copy of the notice has been given under subsection 51 (8) may—

- (a) not later than 7 days after the date of the notice; and
- (b) by notice in writing given to the commissioner;

request the commissioner to arrange for an inspection to investigate the circumstances relating to the giving of the notice.

(2) Upon such a request being made, the operation of the notice to which it relates is suspended until an inspector completes an investigation into the circumstances relating to the giving of the notice.

(3) As soon as practicable after a request has been made, the commissioner shall arrange for an inspector to investigate the circumstances in which the notice was given.

(4) Where, as a result of an investigation arranged under subsection (3), an inspector believes on reasonable grounds that—

- (a) the provisional improvement notice should not have been given to a person; or
- (b) the person to whom the notice was given has complied with section 53 in relation to the notice; or
- (c) for any other reason, the notice should no longer remain in force;

the inspector shall revoke the notice by notice in writing given to that person.

(5) An inspector who revokes a provisional improvement notice shall take all reasonably practicable steps to give to each person referred to in paragraph 51 (8) (b), (c) or (d), to whom a copy of the notice was given, a notice in writing of the revocation.

Division 3—Emergency procedures

56 Action by health and safety representatives

(1) Where a health and safety representative for a designated work group believes on reasonable grounds that there is an immediate threat to

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the health or safety of an employee included in the group unless the employee ceases to perform particular work, the representative shall—

- (a) inform the person (a *supervisor*) supervising the employee in the performance of the work of the threat to health or safety; or
- (b) if no supervisor can be contacted immediately—direct the employee to cease, in a safe manner, to perform the work, and, as soon as practicable, inform a supervisor that the direction has been given.

(2) Where a supervisor is informed under paragraph (1) (a) of a threat to the health and safety of an employee, the supervisor shall take such action as he or she considers appropriate to remove that threat, and any such action may include directing the employee to cease, in a safe manner, to perform the work.

(3) Where a health and safety representative—

- (a) is unable to agree with the supervisor whom the representative has informed under paragraph (1) (a) of a threat to the health or safety of a person performing work, and who has taken such action as the supervisor considers appropriate to remove that threat, that the action taken was sufficient to remove that threat; or
- (b) is unable to agree with the supervisor whom the representative has informed under paragraph (1) (b) that there is a need for a direction under that paragraph;

the representative or supervisor may request the commissioner to arrange for an inspector to investigate the work that is the subject of the disagreement.

(4) As soon as practicable after a request is made, the commissioner shall arrange for an inspector to conduct an investigation of the work and the inspector shall exercise such of his or her powers under this Act as the inspector considers necessary in relation to the work.

57 Alternative work

Nothing in this Division shall be taken to affect an employer's right to require an employee to perform alternative work while work that is usually performed by the employee is the subject of a direction under paragraph 56 (1) (b).

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Division 4—Health and safety committee

58 Functions

(1) A health and safety committee in respect of an employer's employees has the following functions:

- (a) to assist the employer to develop and implement measures designed to protect the health and safety at work of the employees and to keep the adequacy of those measures under review;
- (b) to facilitate cooperation between the employer and the employees in relation to occupational health and safety matters;
- (c) to assist the employer to disseminate among the employees, in appropriate languages, information relating to health and safety at work;
- (d) such functions as are prescribed;
- (e) such other functions as are agreed upon between the employer and the committee.

(2) A health and safety committee has power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions.

59 Duties of employers

(1) Where there is a health and safety committee in respect of the employees of an employer, the employer shall—

- (a) subject to subsections (2) and (3), make available to the committee any information possessed by the employer relating to risks to the health and safety of employees—
 - (i) at any workplace under the employer's control; or
 - (ii) arising from the conduct by the employer of any undertaking, or from plant or substances used for the purposes of the undertaking; and
- (b) permit any member of the committee who is an employee of the employer to take such time off work, without loss of remuneration or other entitlements, as is necessary and reasonable for the member to attend meetings of the committee or, with the approval of the committee, to engage in the affairs of the committee.

Maximum penalty: 10 penalty units.

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(2) An employer shall not make available to a health and safety committee information of a confidential medical nature relating to a person who is or was an employee of the employer, unless—

- (a) the person has delivered to the employer a written authority permitting the information to be made available to the committee; or
- (b) the information is in a form that does not identify the person or enable the identity of the person to be discovered.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

(3) An employer is not required to make available to a health and safety committee any information in respect of which the employer is entitled to claim, and does claim, legal professional privilege.

(4) Where—

- (a) a declaration under section 39 is in force in respect of a construction site; and
- (b) a worker to whom the declaration relates is a member of a health and safety committee established in respect of employees on the site;

the subcontractor who employs the worker shall permit the worker to take such time off work, without loss of remuneration or other entitlements, as is necessary and reasonable for the worker to attend meetings of the committee or, with the approval of the committee, to engage in the affairs of the committee.

Maximum penalty: 10 penalty units.

60 Liability

An action or other proceeding, civil or criminal, does not lie against a member of a health and safety committee for or in relation to an act done, or omission made, in good faith by the member in connection with the member's functions under this Act or the regulations.

PART 5—INSPECTORS

Division 1—Inspections

61 Things connected with offences

(1) For the purposes of this Part, a thing is connected with a particular offence if—

- (a) it is a thing with respect to which the offence has been committed;
- (b) it will afford evidence of the commission of the offence; or
- (c) it was used, or is or was intended to be used, for the purpose of committing the offence.

(2) A reference in this Part, to an offence shall be read as including a reference to an offence that there are reasonable grounds for believing has been or will be committed.

62 Inspections etc

(1) For the purpose of ascertaining whether the provisions of this Act or the regulations are being complied with, an inspector may, without the authority of a warrant—

- (a) enter premises other than residential premises at any reasonable time; or
- (b) enter any premises at any time with the consent of the occupier;

and, subject to subsection (2), exercise any power referred to in subsection (3) if the inspector believes on reasonable grounds that the premises are used, or are intended to be used, as a workplace.

(2) An inspector who enters premises under subsection (1) is not entitled to remain on the premises if, on request by the occupier, the inspector does not show his or her identity card to the occupier.

(3) An inspector who enters premises under subsection (1) may—

- (a) inspect, examine, take measurements of, or conduct tests concerning, the premises or any system of work, plant, substance or thing at the premises; or

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- (b) take into the premises such equipment and materials as the inspector considers necessary; or
- (c) require any person on the premises—
 - (i) to give the inspector such information; or
 - (ii) to produce to the inspector any document containing such information;
relating to the premises or any system of work, plant, substance or thing at the premises as the inspector requires; or
- (d) inspect, make copies of, or take extracts from, a document referred to in subparagraph (c) (ii); or
- (e) take such photographs, or make such sketches or recordings, as the inspector considers necessary; or
- (f) to the extent that it is necessary to inspect or examine, or to take measurements or conduct tests in relation to, any plant, substance or thing at the premises—
 - (i) seize the plant, substance or thing and remove it from the premises; or
 - (ii) take (without paying for it) a sample of the substance or thing and remove the sample from the premises; or
- (g) seize any plant, substance or thing that the inspector believes on reasonable grounds is connected with an offence against this Act or the regulations and remove it from the premises; or
- (h) require the occupier to give the inspector such assistance as is necessary and reasonable to enable the inspector to exercise his or her powers under this Act or the regulations.

63 Consent to entry

An inspector who requests the occupier of premises to consent to the inspector entering the premises under section 62 shall inform the occupier that he or she may refuse to give that consent.

64 Notice of removal

(1) Where, under section 62, an inspector seizes any plant, substance or thing, or takes a sample of any substance or thing, the inspector shall take all reasonably practicable steps to notify in writing—

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- (a) the employer for whom work is performed using the plant, substance or thing; and
- (b) each person, other than that employer, who has a prescribed interest in the plant, substance or thing; and
- (c) if there is a health and safety representative for a designated workgroup which includes an employee who uses the plant, substance or thing in performing work at the workplace—that representative;

of the seizure and the reasons for it.

(2) Where an inspector removes any plant, substance or thing from premises for the purpose of inspecting, examining, taking measurements of, or conducting tests concerning the plant, substance or thing, the inspector shall—

- (a) ensure that the inspection, examination, measuring or testing is conducted as soon as is reasonably practicable; and
- (b) subject to section 65, return the plant, substance or thing to the premises as soon as is reasonably practicable.

(3) As soon as practicable after the completion of any such inspection, examination, measurement or testing, the inspector shall give, to each person whom the inspector is required by subsection (1) to notify of the removal, a written statement setting out the results of the inspection, examination, measurement or testing.

65 Return of certain seized articles

(1) Where an inspector—

- (a) having seized any plant, substance or thing under paragraph 62 (3) (f), believes on reasonable grounds that it is connected with an offence against this Act or the regulations; or
- (b) under paragraph 62 (3) (g), seizes any plant, substance or thing that the inspector believes on reasonable grounds is connected with an offence against this Act or the regulations;

the inspector may retain the plant, substance or thing for the purpose of adducing evidence in a prosecution for the offence.

(2) If a prosecution for such an offence is not instituted within 60 days after the date of the seizure, the inspector shall take all reasonably

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practicable steps to return the plant, substance or thing to the person whom the inspector reasonably believes is entitled to its possession.

66 Search warrants

(1) Where an inspector suspects on reasonable grounds that there is, or that, within the next following 72 hours, there may be, in or on any premises, a thing of a particular kind connected with a particular offence against this Act or the regulations, the inspector may—

- (a) lay before the magistrate an information on oath setting out those grounds; and
- (b) apply for the issue of a warrant to search the premises for things of that kind.

(2) Where an application is made under subsection (1) for a warrant to search premises, a magistrate may, subject to subsection (3), issue a warrant authorising an inspector named in the warrant, with such assistance and by such force as is necessary and reasonable—

- (a) to enter the premises; and
- (b) to search the premises for things of the kind specified in the warrant; and
- (c) to seize anything found in the course of the search that the inspector believes on reasonable grounds to be a thing of that kind connected with the relevant offence.

(3) A magistrate shall not issue a warrant under subsection (2) unless—

- (a) the informant or another person has given the magistrate, either orally or by affidavit, any further information that the magistrate requires concerning the grounds on which the issue of the warrant is being sought; and
- (b) the magistrate is satisfied that there are reasonable grounds for issuing the warrant.

(4) A warrant shall—

- (a) state the purpose for which it is issued; and
- (b) specify the nature of the relevant offence; and

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- (c) specify particular hours during which the entry is authorised, or state that the entry is authorised at any time of the day or night; and
- (d) include a description of the kinds of things in relation to which the powers under the warrant may be exercised; and
- (e) specify the date, being a date not later than 1 month after the date of issue of the warrant, on which the warrant ceases to have effect.

67 Obstructing inspectors

A person shall not, without reasonable excuse—

- (a) obstruct or hinder an inspector in the exercise of his or her powers under this Act or the regulations; or
- (b) contravene a requirement made by an inspector under section 62.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

68 False information

A person shall not, in purported compliance with a requirement made under section 62 by an inspector—

- (a) give the inspector information that is, to the person's knowledge, false or misleading in a material particular; or
- (b) give the inspector a document containing information that is, to the person's knowledge, false or misleading in a material particular.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

Division 2—Administration

70 Inspectors

- (1) There shall be 1 or more inspectors for the purposes of this Act.
- (2) The chief executive shall create and maintain 1 or more offices in the public service the duties of which include performing the functions of an inspector.
- (3) The following persons shall be inspectors:

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- (a) any public servant for the time being performing the duties of a public service office referred to in subsection (2);
- (b) the commissioner, including a delegate of the commissioner with any delegated powers of an inspector.

71 Identity cards

(1) The chief executive shall issue to the commissioner an identity card that specifies the commissioner's name and office, and on which appears a recent photograph of the commissioner.

(2) The chief executive shall issue to a delegate of the commissioner with any delegated powers of an inspector an identity card that specifies the delegate's name and delegated office, and on which appears a recent photograph of the delegate.

(3) The chief executive shall issue to an inspector an identity card that specifies the inspector's name and office, and on which appears a recent photograph of the inspector.

(4) Upon ceasing—

- (a) to occupy, or to act in, the office of the commissioner; or
- (b) to be a delegate of the commissioner with any delegated powers of an inspector; or
- (c) to occupy, or to act in, an office of inspector;

a person shall not, without reasonable excuse, fail to return his or her identity card to the chief executive.

Maximum penalty: 1 penalty unit.

74 Liability

An action or other proceeding, civil or criminal, does not lie against the commissioner or an inspector for or in relation to any act done, or omission made, in good faith in connection with his or her powers under this Act or the regulations.

PART 6—IMPROVEMENT AND PROHIBITION NOTICES ETC

76 Improvement notices

(1) Where an inspector believes on reasonable grounds that a person (the *responsible person*)—

- (a) is contravening a provision of this Act or the regulations; or
- (b) is likely to contravene a provision of this Act or the regulations;

the inspector may, by notice in writing given to the person, require the person to rectify the matters or activities occasioning the contravention or likely contravention.

(2) An improvement notice shall—

- (a) specify the contravention that the inspector believes is occurring or is likely to occur, and set out the reasons for that belief; and
- (b) specify a period, being a period that is, in the inspector's opinion reasonable, within which the responsible person is to rectify the matters or activities to which the notice relates.

(3) An improvement notice may specify action that the responsible person is to take during the period specified in the notice.

(4) Where an improvement notice is given to an employer, the employer shall—

- (a) give a copy of the notice to—
 - (i) the health and safety representative for each designated work group for the employer's employees performing work that is affected by the notice; and
 - (ii) the chairperson of any health and safety committee in existence in respect of those employees; and
- (b) cause a copy of the notice to be displayed at or near each workplace at which that work is being performed.

(5) A person who, without reasonable excuse, contravenes subsection (4) commits an offence.

Maximum penalty: 10 penalty units.

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(6) Where an inspector issues an improvement notice, the inspector shall take all reasonably practicable steps to give a copy of the notice to—

- (a) where the notice is given to an employee in connection with work performed by the employee for an employer—the employer; and
- (b) where the notice relates to any workplace, plant, substance or thing in which a person (other than the person to whom the notice is given or an employer referred to in paragraph (a)) has a prescribed interest—to each such person; and
- (c) where the notice is issued to a person (not being an employer) who has a prescribed interest in any workplace, plant, substance or thing by reason of which the inspector believes a contravention of this Act or the regulations is occurring or is likely to occur—the employer of the employees who work in that workplace or who use that plant, substance or thing.

(7) Before the end of the period specified in an improvement notice, the inspector who issued the notice may, by notice in writing given to the responsible person, extend the period within which the responsible person is to take action in accordance with the notice.

(8) Where an inspector believes on reasonable grounds that adequate measures have been taken to rectify the matters or activities in respect of which an improvement notice has been given to a person, the inspector shall, by notice in writing given to the person, revoke the improvement notice.

77 Prohibition notices

(1) Where an inspector believes on reasonable grounds that an activity carried on at a workplace involves a risk of imminent and serious injury to a person at or near the workplace, the inspector may, by notice in writing given to the person who is, or whom the inspector reasonably believes to be, in charge of that activity, direct that person to ensure that—

- (a) the activity is not carried on; or
- (b) the activity is not carried on except in accordance with directions specified in the notice.

(2) Without limiting the generality of paragraph (1) (b), directions referred to in that paragraph may include directions relating to—

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- (a) the part of the workplace at which the prohibited activity is not to be carried on; or
 - (b) any plant or substance that is not to be used in connection with the prohibited activity; or
 - (c) any procedure that is not to be followed in connection with the prohibited activity.
- (3) Where a prohibition notice is given to an employer, the employer shall—
- (a) give a copy of the notice to—
 - (i) the health and safety representative for each designated work group for the employer's employees performing work that is affected by the notice; and
 - (ii) the chairperson of any health and safety committee in existence in respect of those employees; and
 - (b) cause a copy of the notice to be displayed in a prominent place at or near each workplace at which that work is being performed.
- (4) A person who, without reasonable excuse, contravenes subsection (3) commits an offence.

Maximum penalty: 10 penalty units.

- (5) Where an inspector issues a prohibition notice, the inspector shall take all reasonably practicable steps to give a copy of the notice to—
- (a) where the notice is given to an employee in connection with work performed by the employee for an employer—that employer; and
 - (b) where the notice relates to any workplace, plant, substance or thing in which a person (other than the person to whom the notice is given or an employer referred to in paragraph (a)) has a prescribed interest—each such person; and
 - (c) where the notice is issued to a person (not being an employer) who has a prescribed interest in any workplace, plant, substance or thing by reason of which the inspector believes a contravention of this Act or the regulations is occurring or is likely to occur—the employer of the employees who work in that workplace or who use that plant, substance or thing.

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(6) Where an inspector believes on reasonable grounds that adequate measures have been taken to remove the risk in respect of which a prohibition notice has been given to a person, the inspector shall, by notice in writing given to the person, revoke the prohibition notice.

78 Directions not to disturb workplace etc

(1) An inspector may direct a person who is for the time being in charge of operations at a workplace to ensure that—

- (a) the workplace or a specified part of the workplace; or
- (b) specified plant or a specified substance or thing;

is not disturbed for a specified period.

(2) An inspector shall not give a direction unless the inspector believes on reasonable grounds that it is necessary to do so in order to—

- (a) remove an immediate threat to the health or safety of any person;
or
- (b) allow the inspection, examination or taking of measurements of, or the conduct of tests concerning, a workplace or any plant, substance or thing at a workplace.

(3) The period specified in a direction shall be the period that the inspector believes on reasonable grounds is necessary in order to allow the removal of the threat, or the inspection, examination, measuring or testing, as the case may be, to take place.

(4) Where an inspector gives a direction to a person, that person shall cause the direction to be displayed in a prominent place at the workplace—

- (a) that is, or a specified part of which is, under the notice, to be left undisturbed; or
- (b) at which the plant, substance or thing that is, under the notice, to be left undisturbed, is located.

(5) A person who, without reasonable excuse, contravenes subsection (4) commits an offence.

Maximum penalty: 10 penalty units.

(6) As soon as practicable after giving a direction, the inspector shall take all reasonable steps to notify—

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- (a) the employer of any employee performing work—
 - (i) at the workplace or the part of the workplace; or
 - (ii) that involves the plant, substance or thing;
to which the direction relates; and
- (b) each person, other than an employer, who has a prescribed interest in the workplace, plant, substance or thing to which the direction relates; and
- (c) if there is a health and safety representative for a designated workgroup in which there is included an employee performing work—
 - (i) at the workplace or the part of a workplace; or
 - (ii) involving the plant, substance or thing;
to which the direction relates—that representative;

of the giving of the direction.

(7) A direction under subsection (1) shall be given in writing and shall set out the reasons for the giving of the direction.

(8) Where an inspector believes on reasonable grounds that a direction under subsection (1) is no longer necessary, the inspector shall, by notice in writing given to the person to whom the direction was given, revoke the direction.

79 Compliance

A person to whom—

- (a) an improvement notice; or
- (b) a prohibition notice; or
- (c) a direction under subsection 78 (1);

has been given shall, to the extent that the notice or direction relates to a matter over which the person has control, ensure that the notice or direction is complied with.

Maximum penalty: 100 penalty units.

PART 7—REVIEW OF DECISIONS

Division 1—Review authority

80 Establishment

There is established by this section a review authority called the Occupational Health and Safety Review Authority.

80A Constitution

(1) The review authority shall be constituted by a member of the commission appointed by the president.

(2) Where—

- (a) the person constituting the authority for a proceeding ceases to be available to complete the proceeding; and
- (b) in accordance with subsection (1) the authority is reconstituted by another member of the commission;

the reconstituted authority shall complete the proceeding and, for that purpose, may have regard to any record of the authority as previously constituted, including any transcript of evidence taken in the proceeding.

80B Disclosure of interest

(1) Where the person constituting the review authority has any interest, pecuniary or otherwise, that could conflict with the proper performance of the person's functions in relation to a proceeding—

- (a) the person shall disclose the interest to the parties to the proceeding; and
- (b) unless all the parties to the proceeding consent, the person shall not take part or any further part in the proceeding.

(2) Where the president directs the member who constitutes the authority not to take part or any further part in a proceeding before the authority, the member shall not act, or act further, in the proceeding.

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Division 2—Reconsideration and review of decisions

80C Meaning of *inspector* in div 2

In this Division:

inspector does not include the commissioner or a delegate of the commissioner.

81 Reviewable decisions

(1) For the purposes of this Part, each of the following decisions of an inspector is a reviewable decision:

- (a) revoking, or refusing to revoke, a provisional improvement notice under subsection 55 (4);
- (b) deciding to seize any plant, substance or thing under paragraph 62 (3) (f) or (g);
- (c) giving an improvement notice under subsection 76 (1);
- (d) revoking, or refusing to revoke, an improvement notice under subsection 76 (8);
- (e) giving a prohibition notice under subsection 77 (1);
- (f) revoking, or refusing to revoke, a prohibition notice under subsection 77 (6);
- (g) giving a direction under subsection 78 (1);
- (h) revoking, or refusing to revoke, a direction under subsection 78 (8).

(2) For the purposes of this Part, each of the following decisions of the commissioner is a reviewable decision:

- (a) establishing a designated work group under subsection 38 (1) or (2);
- (b) varying a designated work group under subsection 38 (3);
- (c) disqualifying a health and safety representative under subsection 48 (1);
- (d) revoking, or refusing to revoke, a provisional improvement notice under subsection 55 (4);

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- (e) deciding to seize any plant, substance or thing under paragraph 62 (3) (f) or (g);
- (f) giving an improvement notice under subsection 76 (1);
- (g) revoking, or refusing to revoke, an improvement notice under subsection 76 (8);
- (h) giving a prohibition notice under subsection 77 (1);
- (i) revoking, or refusing to revoke, a prohibition notice under subsection 77 (6);
- (j) giving a direction under subsection 78 (1);
- (k) revoking, or refusing to revoke, a direction under subsection 78 (8);
- (l) a decision by the commissioner on a reconsideration under section 83 of a reviewable decision made by an inspector.

82 Eligible persons

- (1) An eligible person, in relation to a reviewable decision, is a person who is entitled to request a review of that decision.
- (2) The persons who may request a review of a reviewable decision made by an inspector shall be ascertained in accordance with Part 1 of the Schedule.
- (3) The person or persons who may request a review of a reviewable decision made by the commissioner shall be ascertained in accordance with Part 2 of the Schedule.

83 Reconsideration of inspectors' decisions

- (1) The commissioner may reconsider a reviewable decision made by an inspector.
- (2) The commissioner shall reconsider a reviewable decision made by an inspector if requested in writing to do so by an eligible person in relation to that decision.
- (3) Subject to subsection (4), a request for the reconsideration of a reviewable decision does not affect the operation of the decision or prevent the taking of action to implement the decision.

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- (4) Where a request is made to reconsider a decision to give an improvement notice, the operation of the decision is suspended pending determination of the reconsideration.
- (5) On a reconsideration of a reviewable decision made by an inspector, the commissioner shall—
- (a) affirm or vary the decision; or
 - (b) revoke the decision and, if the commissioner thinks appropriate, make a decision in substitution for the decision revoked.
- (6) A reviewable decision made by an inspector, as varied by the commissioner on a reconsideration, or a decision of the commissioner made on a reconsideration in substitution for a reviewable decision made by an inspector, shall for all purposes (other than the purpose of requesting a review under section 84) be taken to be a decision of that inspector and, upon the coming into operation of the decision of the commissioner, unless the commissioner otherwise orders, shall be taken to have had effect on and from the date on which the reviewable decision would, but for this section, have had effect.

84 Review of decisions

- (1) A request to the review authority for the review of a reviewable decision shall be made in writing and shall be accompanied by the determined fee.
- (2) Subject to subsection (3), a request for a review of a reviewable decision does not affect the operation of the decision or prevent the taking of action to implement the decision, except to the extent that the authority makes an order to the contrary.
- (3) Where a request is made for a review of a decision to give an improvement notice, the operation of a decision is suspended pending determination of the review, except to the extent that the authority makes an order to the contrary.
- (4) Where an eligible person in relation to a reviewable decision requests the authority to review the decision, the authority shall, subject to this Part, review the decision and shall—
- (a) affirm or vary the decision; or
 - (b) revoke the decision and, if considered appropriate, make a decision in substitution for the decision revoked.

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(5) A reviewable decision of a person, as varied by the authority, or a decision of the authority made in substitution for a reviewable decision of a person, shall for all purposes (other than for the purposes of this section) be taken to be a decision of that person and, upon the coming into operation of the decision of the authority, unless that authority orders otherwise, shall be taken to have had effect on and from the date on which the reviewable decision would, but for this section, have had effect.

(6) The authority shall give written notice of its decision to each party to the proceeding, setting out the reasons for its decision.

84A Parties to proceedings before review authority

(1) For the purposes of this Part, the parties to a proceeding before the review authority are—

- (a) any eligible person who, in writing, requests the authority to review the reviewable decision; and
- (b) the person who made the decision; and
- (c) any other person joined as a party to the proceeding by the authority in accordance with subsection (2).

(2) The review authority may—

- (a) on application in writing by a person—
 - (i) who is an eligible person in relation to a reviewable decision; or
 - (ii) whose interests are affected by a reviewable decision; and
- (b) by notice in writing given to the applicant;

join the applicant as a party to a proceeding for the review of the decision.

84B Representation before review authority

A party to a proceeding before the review authority may appear in person or may be represented by some other person.

84C Notice of proceeding

Before commencing a proceeding, the review authority shall give each party a notice specifying—

- (a) the time and place for the proceeding; and

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- (b) the matters to which the proceeding relates.

84D Procedure of review authority

- (1) In proceedings before the review authority—
 - (a) the authority is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks appropriate; and
 - (b) the procedure of the authority is, subject to this Part, within the discretion of the authority; and
 - (c) the proceedings shall be conducted with as little formality and technicality, and with as much expedition as the requirements of this Act and the substantial merits of the case permit; and
 - (d) the authority may give directions relating to procedure, including directions that it considers will enable costs to be reduced and will help to achieve a prompt hearing of the matters in issue between the parties to the proceeding.
- (2) Without limiting the generality of subsection (1), the review authority shall ensure that each party to a proceeding is given a reasonable opportunity to—
 - (a) call or give evidence; and
 - (b) examine or cross-examine witnesses; and
 - (c) inspect any documents to which the authority proposes to have regard in reaching a decision in the proceeding; and
 - (d) make submissions.

84E Hearings to be in public except in special circumstances

- (1) Subject to this section, a proceeding before the review authority shall be in public.
- (2) Where the review authority believes on reasonable grounds that it is desirable to do so because of the confidential nature of any evidence or matter or for any other reason, the authority may—
 - (a) direct that a proceeding or part of a proceeding shall take place in private and give directions as to the persons who may be present; and

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- (b) give directions prohibiting or restricting the publication of evidence given before the authority, whether in public or in private, or of matters contained in documents lodged with the authority or received in evidence by the authority; and
- (c) give directions prohibiting or restricting the disclosure to some or all of the parties to a proceeding of evidence given before the authority, or of the contents of a document lodged with the authority or received in evidence by the authority, in relation to the proceeding.

(3) A person shall not, without reasonable excuse, contravene a direction given by the authority under subparagraph (2) (b) or (c).

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

84F Reference of questions of law to Supreme Court

- (1) The review authority may, of its own motion or at the request of a party, refer a question of law arising in a proceeding before it to the Supreme Court for decision.
- (2) The Supreme Court has jurisdiction to hear and determine a question of law referred to it under this section.
- (3) Where a question of law arising in a proceeding has been referred to the Supreme Court under this section, the authority shall not, in that proceeding—
 - (a) give a decision to which the question is relevant while the reference is pending; or
 - (b) proceed in a manner, or make a decision, that is inconsistent with the determination of the Supreme Court on the question.

84G Appeals to the Supreme Court

- (1) A party to a proceeding before the review authority may appeal to the Supreme Court on a question of law from any decision of the review authority in that proceeding.
- (2) An appeal by a person under subsection (1) shall be instituted—
 - (a) not later than the 28th day after the day on which a document setting out the terms of the decision of the review authority is

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given to the person or within such further time as the Supreme Court (whether before or after the end of that day) allows; and

- (b) in such manner as is prescribed by rules of court made under the *Supreme Court Act 1933*.
- (3) The Supreme Court has jurisdiction to hear and determine appeals instituted in that court in accordance with subsection (1).
- (4) The Supreme Court shall hear and determine the appeal and may make—
 - (a) an order affirming or setting aside the decision of the authority; or
 - (b) an order remitting the case to be heard and decided again, either with or without the hearing of further evidence by the authority in accordance with the directions of the court; or
 - (c) such other order as the court thinks appropriate.

Division 3—Miscellaneous

84H Powers of review authority

- (1) For the purposes of a proceeding, the review authority may—
 - (a) take evidence on oath or affirmation and for that purpose—
 - (i) may require a person attending before the authority to take an oath or make an affirmation; and
 - (ii) may administer an oath or affirmation to such a person; and
 - (b) proceed in the absence of a party who has been given notice of the proceeding under section 84C; and
 - (c) adjourn the proceeding from time to time.
- (2) The authority may, in writing, direct a person to attend a proceeding at the time and place specified in the notice and to give evidence and produce any document in the person's custody or under the person's control that the person is required by the notice to produce.
- (3) Where a person is directed to produce a document and the document is not—
 - (a) in writing; or
 - (b) written in the English language; or

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- (c) decipherable on sight;

the person shall produce, in addition to the document if it is in writing, or instead of the document if it is not in writing, a statement written in the English language and decipherable on sight, containing the whole of the information in the document.

84J Inspection and retention of documents

(1) The review authority may inspect any document produced before it and may retain the document for such period as is necessary for the purposes of this Part and may make copies of, or take extracts from, the document.

(2) Where a document is retained by the authority under subsection (1)—

- (a) a person otherwise entitled to possession of the document is, on request, entitled to be supplied with a copy certified by the authority to be a true copy of the document; and
- (b) a person who would be entitled to inspect the document, if it were not in the possession of the authority, or a person authorised by such a person, may at any reasonable time inspect, make copies of, or take extracts from, the document.

84K Failure to attend etc

(1) A person directed under subsection 84H (2) to attend proceedings before the review authority shall not, without reasonable excuse, fail—

- (a) to comply with the direction; or
- (b) to attend from day-to-day unless released or excused from further attendance by the authority; or
- (c) produce a document in accordance with the direction.

(2) A person appearing as a witness before the authority, shall not, without reasonable excuse, fail to take an oath or make an affirmation when so required under subsection 84H (1).

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

84M Contempt

A person shall not, without reasonable excuse—

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- (a) obstruct or hinder the review authority in the performance of its functions; or
- (b) disrupt proceedings of the authority.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

84N False information

A person shall not—

- (a) give the review authority information that is, to the person's knowledge, false or misleading in a material particular; or
- (b) give the authority a document containing information that is, to the person's knowledge, false or misleading in a material particular.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

84P Operation and implementation of a decision that is subject to appeal

(1) Subject to this section, the institution of an appeal to the Supreme Court from a decision of the review authority does not affect the operation of the decision or prevent the taking of action to implement the decision.

(2) Where an appeal is instituted in the Supreme Court from a decision of the authority, the court may make such order staying or otherwise affecting the operation or implementation of either or both of the following:

- (a) a decision of the authority or a part of that decision;
- (b) the decision to which the proceeding before the authority related or a part of that decision;

as the court considers appropriate for the purpose of securing the effectiveness of the hearing and determination of the appeal.

(3) Where an order is in force under subsection (2) (including an order that has been varied under this subsection), the Supreme Court may make an order varying or revoking the firstmentioned order.

(4) An order in force under subsection (2) (including an order that has been varied under subsection (3))—

- (a) is subject to such conditions as are specified in the order; and

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- (b) has effect until—
- (i) if a period for the operation of the order is specified in the order—the end of that period or, if a decision is given on the appeal before the end of that period, the giving of the decision; or
 - (ii) if no period is so specified—the giving of a decision on the appeal.

84Q Protection of review authority etc

- (1) The review authority has, in the performance of its functions, the same protection and immunity as a Judge of the Supreme Court.
- (2) A legal practitioner or other person appearing before the authority on behalf of a party, or if the party appears personally, the party, has the same protection and immunity as a barrister has in appearing for a party in proceedings in the Supreme Court.
- (3) Subject to this Act, a person directed to attend or appearing before the authority as a witness has the same protection, and is subject to the same liabilities, as a witness in proceedings in the Supreme Court.

PART 8—MISCELLANEOUS

85 Notice of events

(1) Where an employer is aware of the occurrence of any of the following events at or near the workplace:

- (a) the death of a person;
- (b) an injury to a person other than an employee of the employer;
- (c) an injury to an employee as a result of which the employee is incapacitated for work for the prescribed period;
- (d) a dangerous occurrence;

and the event is attributable to the conduct of the employer's undertaking at the workplace, the employer shall, in accordance with the regulations, give notice of the event to the commissioner.

(2) A person who, without reasonable excuse, contravenes subsection (1) commits an offence.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

(3) Without limiting the generality of regulations that may be made for the purposes of subsection (1) (other than paragraph (1) (c)), such regulations may include provisions relating to—

- (a) the time within which, and the manner in which, notice of an accident or dangerous occurrence is to be given, and the form of such a notice; and
- (b) the time within which, and the manner in which, a report of an accident or dangerous occurrence is to be given, and the form of such a report.

86 Records of accidents etc

(1) An employer shall maintain, in accordance with the regulations, a record of each accident or dangerous occurrence in respect of which the employer is required by section 85 to notify the commissioner.

(2) A person who, without reasonable excuse, contravenes subsection (1) commits an offence.

Maximum penalty: 10 penalty units.

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(3) Without limiting the generality of regulations that may be made for the purposes of subsection (1), such regulations may include provisions relating to—

- (a) the nature and contents of a record required to be maintained under this section; and
- (b) the retention of such a record.

87 Codes of practice

(1) The Minister may, by instrument in writing, approve—

- (a) a code of practice; or
- (b) a variation of an approved code of practice;

for the purpose of providing practical guidance to employers, self-employed persons and employees.

(2) Before approving a proposed code of practice or a proposed variation of a code of practice, the Minister shall—

- (a) refer the proposed code or variation to the council for its consideration; and
- (b) take into account any relevant recommendation made by the council.

(3) An approved code of practice may consist of any code, standard, rule, specification or provision relating to occupational health and safety and may apply, adopt or incorporate provisions of any document as in force or existing—

- (a) when the code, or a variation of the code, is approved; or
- (b) from time to time.

(4) An instrument under subsection (1) is a disallowable instrument.

(5) The commissioner shall publish in a newspaper circulating in the Territory a notice of each approval given under subsection (1)—

- (a) specifying the date on which the approval takes effect; and
- (b) specifying the place at which copies of the code to which the approval relates may be purchased; and

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- (c) containing a statement to the effect that an up-to-date copy of each approved code, and any document the provisions of which are applied, adopted or incorporated in an approved code, may be inspected by members of the public at the office of the commissioner.

(6) The commissioner shall, at all times, ensure that an up-to-date copy of each approved code of practice, and of any document the provisions of which are applied, adopted or incorporated in an approved code of practice, are made available for inspection by members of the public at the office of the commissioner.

88 Protected information

(1) Where a person performing any function under or by virtue of this Act or the regulations obtains protected information concerning the affairs of another person, the firstmentioned person shall not disclose that information to any other person, unless the disclosure—

- (a) is necessary for the performance of a duty by the firstmentioned person under or in connection with this Act or the regulations; or
- (b) is made with the consent in writing of the person to whom the information relates; or
- (c) is required by any court, tribunal, authority or person having lawful authority to require the production of documents or the answering of questions.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

(2) In this section:

protected information means—

- (a) information relating to the personal affairs of a person; or
- (b) information the disclosure of which would, or could reasonably be expected—
 - (i) to disclose a trade secret; or
 - (ii) to adversely affect a person in respect of the lawful business affairs of that person.

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(3) A reference in this section to the disclosure of protected information shall be read as including a reference to the production of a document containing protected information.

89 Interfering with safety equipment

(1) A person shall not, without reasonable excuse, interfere with equipment at or near a workplace, being equipment that the person knows, or ought reasonably to know, is provided in the interests of the health or safety of persons at work.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

(2) In subsection (1):

interfere means do any act or thing that is calculated or likely to inhibit or prevent the effective operation of the equipment.

90 Interfering with workplace notices

A person shall not, without reasonable excuse—

(a) tamper with—

- (i) a provisional improvement notice displayed in accordance with paragraph 52 (b); or
- (ii) an improvement notice displayed in accordance with paragraph 76 (4) (b); or
- (iii) a prohibition notice displayed in accordance with paragraph 77 (3) (b); or
- (iv) a direction under subsection 78 (1) displayed in accordance with subsection 78 (4); or

(b) remove such a notice or direction from being so displayed, before it ceases to be in force.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

91 Employer not to levy employees

An employer shall not levy on any of the employer's employees any charge in respect of anything done or provided, in accordance with this Act or the regulations, in order to ensure the health, safety or welfare of the employees at work.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

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92 Employer not to discriminate

An employer shall not—

- (a) dismiss an employee; or
- (b) injure an employee in his or her employment; or
- (c) prejudicially alter the employee's position (whether by the deduction or withholding of remuneration or by any other means); or
- (d) threaten to take action, in relation to the employee, that is referred to in paragraph (a), (b) or (c);

because the employee—

- (e) has complained or proposes to complain about a matter concerning the health, safety or welfare of employees at work; or
- (f) has assisted or proposes to assist, by the giving of information or otherwise, the conduct of an investigation or inspection by an inspector; or
- (g) has ceased, or proposes to cease, to perform work in accordance with—
 - (i) a direction under paragraph 56 (1) (b); or
 - (ii) a provisional improvement notice, an improvement notice or a prohibition notice; or
 - (iii) a direction under subsection 78 (1).

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

93 Conduct of directors, servants and agents

(1) Where, in proceedings for an offence against this Act or the regulations, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show—

- (a) that the conduct was engaged in by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; and
- (b) that the director, servant or agent had the state of mind.

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(2) Any conduct engaged in on behalf of a body corporate by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority shall be taken, for the purposes of a prosecution for an offence against this Act or the regulations, to have been engaged in also by the body corporate unless the body corporate establishes that it took reasonable precautions and exercised due diligence to avoid the conduct.

(3) Where, in proceedings for an offence against this Act or the regulations, it is necessary to establish the state of mind of a natural person in relation to particular conduct, it is sufficient to show—

- (a) that the conduct was engaged in by a servant or agent of the person within the scope of his or her actual or apparent authority; and
- (b) that the servant or agent had the state of mind.

(4) Any conduct engaged in on behalf of a person other than a body corporate by a servant or agent of the person within the scope of his or her actual or apparent authority shall be taken, for the purposes of a prosecution for an offence against this Act or the regulations, to have been engaged in also by the firstmentioned person unless that person establishes that he or she took reasonable precautions and exercised due diligence to avoid the conduct.

(5) Where—

- (a) a person other than a body corporate is convicted of an offence; and
- (b) the person would not have been convicted of the offence if subsections (3) and (4) had not been made;

the person is not liable to be punished by imprisonment for that offence.

(6) A reference in subsection (1) or (3) to the *state of mind* of a person shall be read as including a reference to—

- (a) the knowledge, intention, opinion, belief or purpose of the person; and
- (b) the person's reasons for the intention, opinion, belief or purpose.

(7) A reference in this section to *engaging in conduct* shall be read as including a reference to failing or refusing to engage in conduct.

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94 Contracting out prohibited

A term of any agreement or contract that purports to exclude, limit or modify the operation of this Act or the regulations is void.

95 Civil liability not affected

Nothing in this Act or the regulations shall be taken—

- (a) to confer a right of action in any civil proceedings in respect of any contravention of any provision of this Act or the regulations; or
- (b) to confer a defence to an action in any civil proceedings or affect a right of action in any civil proceedings.

96 Inconsistency with associated laws

(1) A provision of an associated law has no effect to the extent that it is inconsistent with this Act or the regulations, but such a provision shall be taken to be so consistent to the extent that it is capable of operating concurrently with this Act and the regulations.

(2) This section does not apply in relation to an associated law that is a law of the Commonwealth.

96A Fees

(1) The Minister may, by notice in writing, determine fees for the purposes of this Act or the regulations.

(2) A determination under subsection (1) is a disallowable instrument.

96B Information to be included in annual report

A report prepared by the commissioner, or information provided by the commissioner, under section 8 of the *Annual Reports (Government Agencies) Act 1995* shall include—

- (a) particulars of any direction given by the Minister under section 25G during the period to which the report or information relates; and
- (b) if, during the period to which the report or information relates, effect has been given to any direction under section 25H (whether the direction was received during that period or during an earlier

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period)—a statement by the commissioner indicating how the direction was given effect to.

96C Quarterly reports

- (1) The commissioner must, as soon as practicable after the end of each quarter, prepare and give to the Minister a report on the operations of this Act and of the commissioner during that quarter.
- (2) The Minister must cause a copy of a quarterly report to be laid before the Legislative Assembly within 6 sitting days after he or she receives the report.
- (3) In this section:

quarter means a period of 3 months commencing on 1 July, 1 October, 1 January or 1 April in a financial year.

97 Regulation-making power

- (1) The Executive may make regulations, not inconsistent with this Act, prescribing matters—
 - (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting the generality of subsection (1), the regulations may make provision in relation to any matter affecting, or likely to affect, the occupational health and safety of employees, including provision—
 - (a) prohibiting or regulating the performance of all work or specified work at a workplace or by employees at work; and
 - (b) prohibiting or regulating—
 - (i) the manufacture or supply of plant for use; or
 - (ii) the use of plant;
at a workplace or by employees at work; and
 - (c) prohibiting or regulating the carrying out of all processes or a specified process at a workplace or by employees at work; and
 - (d) prohibiting or regulating—
 - (i) the manufacture or supply of any substance for use; or

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- (ii) the transport, storage or use of any substance;
at a workplace or by employees at work; and
- (e) specifying the form in which information required to be made available to an employer under paragraph 32 (1) (c) or 33 (1) (c) is to be made available; and
- (f) prohibiting, except in accordance with licences or certificates of competency granted under the regulations, the use of specified plant or specified substances at a workplace or by employees at work; and
- (g) providing for the issue, variation, renewal, transfer, suspension and cancellation of such licences, the conditions to which the licences may be subject and the fees payable for the issue, variation or transfer of the licences; and
- (ga) providing for the issue, variation, renewal, suspension and cancellation of certificates of competency, the conditions to which those certificates may be subject and the fees payable for the issue or variation of those certificates; and
- (h) regulating the maintenance and testing of plant used at a workplace or by employees at work; and
- (i) regulating the labelling or marking of substances used at a workplace or by employees at work; and
- (j) regulating the transport of specified plant that is, or specified substances that are, for use at a workplace or by employees at work; and
- (k) prohibiting the performance, at a workplace or by employees at work, of specified activities or work except—
 - (i) by persons who satisfy requirements of the regulations as to qualifications, training or experience; or
 - (ii) under the supervision specified in the regulations; and
- (l) requiring the taking of specified action to avoid accidents or dangerous occurrences; and
- (m) providing for, or prohibiting, the taking of specified action in the event of accidents or dangerous occurrences; and

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- (n) providing for the employment at workplaces of persons to perform specified duties relating to the maintenance of occupational health and safety at workplaces; and
- (o) regulating the provision and use, at a workplace or by employees at work, of protective clothing and equipment, safety equipment and rescue equipment; and
- (p) providing for the monitoring of the health of employees and the conditions at workplaces; and
- (q) requiring the keeping by employers of records of matters related to the occupational health and safety of employees; and
- (r) providing for the provision of first aid equipment and facilities at workplaces; and
- (s) in relation to samples taken under subparagraph 62 (3) (f) (ii), including provisions relating to—
 - (i) the analysis of samples; and
 - (ii) the issuing of certificates in respect of the analysis of samples; and
- (t) in relation to health and safety committees, including provision—
 - (i) relating to the establishment of such committees; and
 - (ii) relating to the constitution, and selection of members, of such committees; and
 - (iii) relating to the performance of the functions of such committees; and
- (u) in relation to the training of health and safety representatives, deputy health and safety representatives or members of health and safety committees, in the knowledge and skills relevant to occupational health and safety, including provisions—
 - (i) relating to the approval of training programs; and
 - (ii) relating to the accreditation of persons who conduct training programs; and
 - (iii) requiring health and safety representatives, deputy health and safety representatives or members of such committees to undertake training programs; and

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- (iv) determining the liability for the fees and expenses incurred in respect of the attendance by health and safety representatives, deputy health and safety representatives or members of such committees at training programs; and
 - (v) in relation to the reconsideration or review of reviewable decisions under Part 7, including provisions relating to the manner in which, and the time within which, a request for reconsideration or review may be made; and
 - (w) prescribing maximum penalties for offences against the regulations for not more than 10 penalty units.
- (3) Before making regulations in relation to a matter referred to in paragraph (2) (u), the Executive shall—
- (a) consult with the council in relation to that matter; and
 - (b) have regard to the recommendations (if any) made to the Executive by the council in relation to that matter.

PART 9—TRANSITIONAL PROVISIONS

98 Meaning of *registrar* in pt 9

In this Part:

registrar means the registrar within the meaning of the *Occupational Health and Safety Act 1989* as in force immediately before the commencement of this section.

99 Acts of registrar

Subject to this Part, anything done or not done under a law of the Territory by, on behalf of, or in relation to, the registrar before the commencement of this section shall be taken on and after that day to have been done or not done by, on behalf of, or in relation to, the commissioner.

100 Time periods

The *Occupational Health and Safety (Amendment) Act (No. 2) 1999* does not affect a period of time that commenced to run before the commencement of this section.

101 Service on registrar

A document or other thing given to, served on, or lodged with, the registrar before the commencement of this section shall be taken on and after that day to have been given to, served on, or lodged with, the commissioner when it was given to, served on, or lodged with the registrar.

102 Instruments

An instrument made, granted or issued by the registrar before the commencement of this section and in force immediately before that day has effect on and after that day (except in relation to matters that occurred before that day) as if it had been made, granted or issued by the commissioner.

103 References in instruments

A reference to the registrar in any instrument made, granted or issued before the commencement of this section and in force immediately before that day has effect on and after that day as if the reference were

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(except in relation to matters that occurred before that day) a reference to the commissioner.

104 Contracts and agreements

A contract or agreement entered into by the registrar and in force immediately before the commencement of this section continues in force on and after that day as if—

- (a) the commissioner were substituted for the registrar as a party to the contract or agreement; and
- (b) any reference in the contract or agreement to the registrar were (except in relation to matters that occurred before that day) a reference to the commissioner.

105 Rights and liabilities

The rights, privileges, obligations and liabilities of the registrar existing immediately before the commencement of this section are, on and after that day, the rights, privileges, obligations and liabilities of the commissioner.

106 Legal proceedings

- (1) Where, before the commencement of this section, a cause of action by or against the registrar had arisen but proceedings in respect of that cause of action had not been instituted before that day, such proceedings may be instituted by or against the commissioner.
- (2) Where, before the commencement of this section, proceedings had been instituted by or against the registrar in a court, tribunal, commission or other body but those proceedings had not been completed before that day, those proceedings may be continued by or against the commissioner.
- (3) In proceedings instituted or continued under this section, each party to the proceedings has the same rights, and is subject to the same obligations, as if the commissioner were the registrar, and the proceedings had been instituted or continued by or against the registrar.

107 Certificates as evidence

A certificate issued by the registrar and in force immediately before the commencement of this section is, on and after that day (except in relation to matters that occurred before that day), evidence of the matters stated in the certificate as if it had been issued by the commissioner.

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108 Modification of operation of pt 9

- (1) The regulations may modify this Part to make provision with respect to any matter that is not already, or is not adequately, dealt with in this Part.
 - (2) A regulation that is expressed to modify the operation of this Part may take the form of a change to the text of this Part (whether by omission, insertion, addition or substitution) so that this Part operates as modified but the regulation does not amend its text.
 - (3) A regulation made under this section ceases to have effect 6 months after the day on which it commences.
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SCHEDULE

(See s 82 (2) and (3))

ELIGIBLE PERSONS

PART 1—INSPECTORS' DECISIONS

column 1 item	column 2 reviewable decisions	column 3 eligible persons
1	revoking a provisional improvement notice under subsection 55 (4)	(a) the health and safety representative who gave the notice; or (b) an involved union in relation to an employee whose work is affected by the notice.
2	refusing to revoke a provisional improvement notice under subsection 55 (4)	(a) the person to whom the notice was given; or (b) an employer whose undertaking is adversely affected by the refusal.
3	deciding to seize any plant, substance or thing under paragraph 62 (3) (f) or (g)	(a) a person who has a prescribed interest in the plant, substance or thing; or (b) an employer whose undertaking is adversely affected by the seizure.
4	giving an improvement notice under subsection 76 (1), a prohibition notice under subsection 77 (1) or a direction under subsection 78 (1)	(a) the person to whom the notice or direction was given; or (b) an employer whose undertaking is adversely affected by the notice or direction.
5	revoking an improvement notice under subsection 76 (8), a prohibition notice under subsection 77 (6) or a direction under subsection 78 (8)	(a) the health and safety representative for a designated work group in which there is an employee whose work is affected by the notice or direction; or (b) if there is no health and safety representative for an employee whose work is affected by the notice or direction—any such employee; or (c) an involved union in relation to an employee whose work is affected by the notice or direction.
6	refusing to revoke an improvement notice under subsection 76 (8), a prohibition notice under subsection 77 (6) or a direction under subsection 78 (8)	(a) the person to whom the notice or direction was given; or (b) an employer whose undertaking is adversely affected by the refusal.

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SCHEDULE—continued

PART 2—COMMISSIONER’S DECISIONS

column 1 item	column 2 reviewable decisions	column 3 eligible persons
1	establishing a designated work group under subsection 38 (1) or (2)	(a) an involved union in relation to the designated work group; or (b) an employer any of whose employees is in the designated work group.
2	varying a designated work group under subsection 38 (3)	(a) an involved union in relation to the designated work group; or (b) an employer any of whose employees is in the designated work group.
3	disqualifying a health and safety representative under subsection 48 (1)	the person disqualified.
4	revoking a provisional improvement notice under subsection 55 (4)	(a) the health and safety representative who gave the notice; or (b) an involved union in relation to an employee whose work is affected by the notice.
5	refusing to revoke a provisional improvement notice under subsection 55 (4)	(a) the person to whom the notice was given; or (b) an employer whose undertaking is adversely affected by the refusal.
6	deciding to seize any plant, substance or thing under paragraph 62 (3) (f) or (g)	(a) a person who has a prescribed interest in the plant, substance or thing; or (b) an employer whose undertaking is adversely affected by the seizure.
7	giving an improvement notice under subsection 76 (1), a prohibition notice under subsection 77 (1) or a direction under subsection 78 (1)	(a) the person to whom the notice or direction was given; or (b) an employer whose undertaking is adversely affected by the notice or direction.
8	revoking an improvement notice under subsection 76 (8), a prohibition notice under subsection 77 (6) or a direction under subsection 78 (8)	(a) the health and safety representative for a designated work group in which there is an employee whose work is affected by the notice or direction; or (b) if there is no health and safety representative for an employee whose work is affected by the notice or direction—any such employee; or (c) an involved union in relation to an employee whose work is affected by the notice or direction.

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SCHEDULE—continued

column 1 item	column 2 reviewable decisions	column 3 eligible persons
9	refusing to revoke an improvement notice under subsection 76 (8), a prohibition notice under subsection 77 (6) or a direction under subsection 78 (8)	(a) the person to whom the notice or direction was given; or (b) an employer whose undertaking is adversely affected by the refusal.
10	a decision by the commissioner on a reconsideration under section 83 of a reviewable decision made by an inspector	a person who is an eligible person in relation to the reviewable decision made by the inspector.

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ENDNOTES

1 About this republication

This is a republication of the Occupational Health and Safety Act 1989 effective from 29 March 2001 to 11 September 2001.

Section 13 of the *Legislation (Republication) Act 1996* authorises the Parliamentary Counsel, in preparing a law for republication, to make textual amendments of a formal nature which the Parliamentary Counsel considers desirable in accordance with current legislative drafting practice. The amendments do not effect a substantive change in the law.

2 Abbreviation key

Key to abbreviations in tables

am = amended
amdt = amendment
ch = chapter
cl = clause
def = definition
dict = dictionary
div = division
exp = expires/expired
Gaz = Gazette
hdg = heading
ins = inserted/added
LR = Legislation (Republication) Act 1996
mod = modified
No = number
notfd = notified
o = order
om = omitted/repealed
orig = original
p = page
par = paragraph
pres = present
prev = previous
(prev...) = previously
prov = provision
pt = part
r = rule/subrule
reg = regulation/subregulation
renum = renumbered
reloc = relocated
R[X] = Republication No
s = section/subsection
sch = schedule
sdiv = subdivision
sub = substituted
SL = Subordinate Law
sp = spent
* = SL unless otherwise stated
† = Act or Ordinance unless otherwise stated

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3 Table of legislation

Act†	Year and number‡	Gazette notification	Commencement	Transitional provisions
<i>Occupational Health and Safety Act 1989</i>	1989 No 18	14 Nov 1989	ss 1 and 2: 14 Nov 1989 ss 3, 5, pt II (ss 9-26), ss 88, 95 and 97: 21 Feb 1990 (see Gaz 1990 No S6) s 4: 14 May 1990 (see s 2) ss 6, 7 and div 2 of pt V (ss 69-75): 26 Mar 1990 (see Gaz 1990 No S6) s 8 and pt III (ss 27-35), div 1 of pt V (ss 61-68), pts VI and VII (ss 76-84), ss 85-87, 89-94 and 96: 9 Apr 1990 (see Gaz 1990 No S6) pt IV (ss 36-60): 10 May 1990 (see Gaz 1990 No S6)	
<i>Occupational Health and Safety (Amendment) Act 1991</i>	1991 No 11	3 Apr 1991	3 Apr 1991	—
<i>Occupational Health and Safety (Amendment) Act 1992</i>	1992 No 58	28 Oct 1992	ss 1-3: 28 Oct 1992 remainder: 1 July 1993	—
<i>Acts Revision (Position of Crown) Act 1993</i>	1993 No 44	27 Aug 1993	27 Aug 1993 (see s 2)	—
<i>Supreme Court (Amendment) Act (No 2) 1993</i>	1993 No 91	17 Dec 1993	17 Dec 1993	—
<i>Public Sector Management (Consequential and Transitional Provisions) Act 1994</i>	1994 No 38	30 June 1994	ss 1 and 2: 30 June 1994 remainder: 1 July 1994 (see Gaz 1994 No S142 p 2)	ss 3, 5-12, 15 and 19
<i>Statute Law Revision (Penalties) Act 1994</i>	1994 No 81	29 Nov 1994	ss 1 and 2: 29 Nov 1994 remainder: 29 Nov 1994 (see Gaz 1994 No S269 p 2)	—
<i>Statutory Offices (Miscellaneous Provisions) Act 1994</i>	1994 No 97	15 Dec 1994	ss 1 and 2: 15 Dec 1994 remainder: 15 Dec 1994 (see Gaz 1994 No S293)	pt III (ss 4-9)

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3 Table of legislation—continued

Act†	Year and number†	Gazette notification	Commencement	Transitional provisions
<i>Annual Reports (Government Agencies) (Consequential Provisions) Act 1995</i>	1995 No 25	5 Sept 1995	5 Sept 1995	—
<i>Statute Law Revision Act 1995</i>	1995 No 46	18 Dec 1995	18 Dec 1995	—
<i>Occupational Health and Safety (Amendment) Act 1996</i>	1996 No 12	1 May 1996	1 May 1996	—
<i>Remuneration Tribunal (Consequential Amendments) Act 1997</i>	1997 No 41	19 Sept 1997	ss 1 and 2: 19 Sept 1997 remainder: 23 Sept 1997 (see Gaz 1997 No S280)	—
<i>Occupational Health and Safety (Amendment) Act 1997</i>	1997 No 44	19 Sept 1997	Ss. 4 (a) and 10: never commenced and rep A2001-11 pt 4.3 Remainder: 19 Sept 1997	—
<i>Legal Practitioners (Consequential Amendments) Act 1997</i>	1997 No 96	1 Dec 1997	ss 1 and 2: 1 Dec 1997 remainder: 1 June 1998 (see s 2 (2))	—
<i>Statute Law Revision (Penalties) Act 1998</i>	1998 No 54	27 Nov 1998	ss 1 and 2: 27 Nov 1998 remainder: 9 Dec 1998 (see Gaz 1998 No 49 p 1078)	—
<i>Occupational Health and Safety (Amendment) Act 1999</i>	1999 No 24	6 May 1999	ss 1-3: 6 May 1999 remainder: 6 Nov 1999	—
<i>Law Reform (Miscellaneous Provisions) Act 1999</i>	1999 No 66	10 Nov 1999	10 Nov 1999	—
<i>Occupational Health and Safety (Amendment) Act (No 2) 1999</i>	1999 No 82	23 Dec 1999	ss 1-3: 23 Dec 1999 remainder: 23 June 2000	—
<i>Occupational Health and Safety (Amendment) Act 2000</i>	2000 No 20	15 June 2000	ss 1 and 2: 15 June 2000 remainder: 23 June 2000 (see s 2)	—
<i>Occupational Health and Safety Amendment Act 2000 (No 2)</i>	2000 No 62	2 Nov 2000	2 Nov 2000	—
<i>Statute Law Amendment Act 2000</i>	2000 No 80	21 Dec 2000	ss 1 and 2: 21 Dec 2000 (1A s 10B) amds 3.16, 3.17: taken to have commenced 23 June 2000 (s 2 (2))	—

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3 Table of legislation—continued

Act†	Year and number†	Gazette notification	Commencement	Transitional provisions
<i>Statute Law Amendment Act 2001</i>	2001 No 11	29 Mar 2001	29 Mar 2001	—

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4 Table of amendments

Provision	How affected†
s 2	om R8 (LR s 15 (1) (o) (iv))
s 4	om 1993 No 44
s 5	am 1991 No 11; 1994 No 97; 1997 No 44; 1999 No 66 s 6 sch 3; 1999 No 82 s 4; 2001 No 11 amdt 3.189, amdt 3.190
s 7	sub 1997 No 44
s 10	am 1996 No 12
s 12	am 1991 No 11 om 1995 No 25
s 13	am 1994 No 38; 1996 No 12; 1999 No 82 s 5
s 14	am 1999 No 82 s 6
s 15	om 1996 No 12
s 17	om 1997 No 41
s 20	am 1999 No 82 s 7
s 21	am 1999 No 82 s 8
s 22	am 1999 No 82 s 9
s 24	am 1996 No 12
s 24A	ins 1996 No 12
pt 2A (ss 25A-25J)	ins 1999 No 82 s 10
ss 25A-25F	ins 1999 No 82 s 10
s 25G	ins 1999 No 82 s 10 am 2000 No 80 amdt 3.16
s 25H	ins 1999 No 82 s 10
s 25I	ins 1999 No 82 s 10 am 2000 No 20 s 4
s 25J	ins 1999 No 82 s 10
s 25K	ins 2000 No 20 s 5
s 26	om 1997 No 41
ss 27-34	am 1994 No 81
s 35A	ins 1999 No 24 s 4 sub 2000 No 62 s 4
s 36	am 1992 No 58
s 37	am 1994 No 81
s 38	am 1994 No 81; 1999 No 82 s 16 sch
s 39	am 1999 No 82 s 16 sch
s 40	am 1994 No 81
s 41	am 1994 No 81; 1999 No 82 s 16 sch
s 42	am 1994 No 81
s 45	am 1991 No 11; 1994 No 81
s 48	am 1999 No 82 s 16 sch
s 50	am 1991 No 11
s 51	am 1994 No 81; 1999 No 82 s 16 sch
ss 52-53	am 1994 No 81
ss 54-56	am 1999 No 82 s 16 sch
s 59	am 1994 No 81
ss 67, 68	am 1994 No 81

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4 Table of amendments—continued

Provision	How affected†
s 69	am 1994 No 81 sub 1994 No 97 om 1999 No 82 s 11
s 70	sub 1994 No 97 am 1999 No 82 s 16 sch
s 71	sub 1994 No 97 am 1998 No 54; 1999 No 82 s 16 sch
s 72	om 1994 No 97
s 73	am 1994 No 81 om 1994 No 97
s 74	am 1999 No 82 s 16 sch
s 75	om 1999 No 82 s 11
s 76	am 1994 No 81
s 77	am 1998 No 54
ss 78, 79	am 1994 No 81
div 1 of pt 7 (ss 80, 80A, 80B)	ins 1991 No 11
s 80	sub 1991 No 11
ss 80A, 80B	ins 1991 No 11
hdg to div 2 of pt 7	ins 1991 No 11
s 80C	ins 1994 No 97 am 1999 No 82 s 16 sch
ss 81-83	am 1999 No 82 s 16 sch
s 84	am 1991 No 11; 1997 No 44
ss 84A-84D	ins 1991 No 11
s 84E	ins 1991 No 11 am 1994 No 81
s 84F	ins 1991 No 11
s 84G	ins 1991 No 11 am 1993 No 91; 1995 No 46
div 3 of pt 7 (ss 84H -84R)	ins 1991 No 11
s 84H	ins 1991 No 11
s 84J	ins 1991 No 11 am 1995 No 46
s 84K	ins 1991 No 11 am 1994 No 81
s 84L	ins 1991 No 11
ss 84M, 84N	ins 1991 No 11 am 1994 No 81
s 84P	ins 1991 No 11 am 1999 No 66 s 6 sch 3
s 84Q	ins 1991 No 11 am 1997 No 96
s 84R	ins 1991 No 11 om 1997 No 44
s 85	am 1991 No 11; 1994 No 81; 1999 No 82 s 16 sch

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4 Table of amendments—continued

Provision	How affected†
s 86	am 1994 No 81; 1999 No 82 s 16 sch
s 87	am 1999 No 82 s 16 sch
ss 88-92	am 1994 No 81
s 96	am 1999 No 82 s 12
s 96A.....	ins 1997 No 44
s 96B.....	ins 1999 No 82 s 13
s 96C	ins 1999 No 82 s 13 am 2000 No 80 amdt 3.17
s 97	am 1991 No 11; 1994 No 81; 1995 No 46; 1997 No 44
pt 9 (ss 98-108).....	ins 1999 No 82 s 14
ss 9-108.....	ins 1999 No 82 s 14
sch	am 1999 No 82 s 15

5 Table of earlier republications

Amendments to	Cut-off date	Republication number
Act 1991 No 11	31 March 1992	(1)
Act 1993 No 44	31 October 1993	(2)
Act 1994 No 38	31 July 1994	(3)
Act 1994 No 97	28 February 1995	(4)
Act 1995 No 46	31 January 1996	(5)
Act 1996 No 12	30 November 1996	(6)
Act 1998 No 54	31 December 1998	(7)
Act 2000 No 20	1 August 2000	(8)

6 Penalties in this republication

The penalties in this republication have been revised in accordance with the *Interpretation Act 1967*, s 63. The value of a penalty unit for an offence against this Act at the date of publication is, therefore—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.

See *Interpretation Act 1967*, s 33AA for additional information.