



AUSTRALIAN CAPITAL TERRITORY

# Occupational Health and Safety Act 1989

No. 18 of 1989

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AUSTRALIAN CAPITAL TERRITORY

# Occupational Health and Safety Act 1989

No. 18 of 1989

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

*[Notified in ACT Gazette S35: 14 November 1989]*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

### **PART I—PRELIMINARY**

#### **Short title**

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

#### **Commencement**

2. (1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.

(2) Subject to subsection (3), the remaining provisions commence on a day, or on respective days, fixed by the Minister by notice in the *Gazette*.

(3) If a provision referred to in subsection (2) has not commenced before the expiration of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision shall, by force of this subsection, commence on the expiration of that period.

### Objects

3. The objects of this Act are—

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

### Position of Crown

4. (1) This Act binds the Crown.

(2) Nothing in this Act renders the Crown liable to be prosecuted for an offence.

### Interpretation

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

“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 1984*;
- (b) the *Dangerous Goods Act, 1975* of the State of New South Wales in its application in the Territory;
- (c) the *Dangerous Goods Regulation, 1978* of the State of New South Wales in its application in the Territory;
- (d) the *Machinery Act 1949*;
- (e) the *Boilers and Pressure Vessels Regulations*;
- (f) the *Inspection of Machinery Regulations*;
- (g) the *Scaffolding and Lifts Act 1957*;

- (h) the Scaffolding and Lifts Act, 1912-1948 of the State of New South Wales in its application in the Territory;
- (i) the Regulations under the Scaffolding and Lifts Act, 1912-1948 of the State of New South Wales in their application in the Territory;
- (j) such other laws (if any) as are prescribed;

“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;

“Council” means the Occupational Health and Safety Council established by section 9;

“Crimes Act” means the Crimes Act, 1900 of the State of New South Wales in its application in the Territory;

“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 by an employer under subsection 37 (1) or (2) or by the Registrar under subsection 38 (1) or (2); and
- (b) such a group as varied by an employer under subsection 37 (4) or by the Registrar under subsection 38 (3);

and, in relation to an employer, means such a group that consists entirely of employees of the employer;

“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 39;

“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 appointed under section 71;

“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;

“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;
- (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));

“prohibition notice” means a notice in force under subsection 77 (1);

“provisional improvement notice” means a notice in force under subsection 51 (1);

“Registrar” means the Occupational Health and Safety Registrar appointed under section 69;



“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.

(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 VIII 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;
- (b) the lessor of any leased workplace;
- (c) the lessee of any leased workplace;
- (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.

**Voluntary workers etc.**

- 6. (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 first-mentioned 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 for the purposes of section 10 of the *Subordinate Laws Act 1989*.

**Exemptions**

**7. (1)** The Minister may, by notice in the *Gazette*, declare that—

- (a) employees who are included in a specified class of employees;
- (b) employers who are included in a specified class of employers; or
- (c) workplaces that are included in a specified class of workplaces;

are exempt from this Act or from a specified provision of this Act or the regulations and such a declaration has effect accordingly.

**(2)** A declaration under subsection (1) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

**Service of documents etc. on employers**

**8. (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 any thing (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 II—OCCUPATIONAL HEALTH AND SAFETY COUNCIL**

### ***Division 1—Establishment, functions and powers***

#### **Establishment**

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

#### **Functions**

**10. (1)** The Council has the following functions:

- (a) to advise the Minister on matters relating to occupational health and safety;
- (b) to inquire into and report to the Minister on matters referred to the Council by the Minister in relation to occupational health and safety;
- (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.

#### **Powers**

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

#### **Annual report**

**12. (1)** The Council shall furnish to the Minister for presentation to the Legislative Assembly a report relating to the activities of the Council during each financial year.

**(2)** The report in respect of a financial year shall be furnished to the Minister within 3 months after the end of that year.

**(3)** The Minister shall present a copy of each report to the Legislative Assembly within 6 sitting days of the Assembly after the day on which the Minister received the report.

***Division 2—Constitution and meetings*****Membership**

**13. (1)** The Council shall consist of—

- (a) 3 members appointed by the Minister after consultation with such persons or bodies as the Minister considers represent the interests of employees;
- (b) 3 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.

**(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.

**Terms of appointment**

**14. (1)** The members of the Council shall be appointed as part-time members.

**(2)** A member of the Council holds office—

- (a) for such period not exceeding 3 years as is specified in the instrument of appointment; and
- (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.

**Age limit**

**15.** A person shall not be appointed as a member of the Council—

- (a) if the person has attained the age of 65 years; or
- (b) for a period that extends beyond the date on which the person will attain the age of 65 years.

**Chairperson and Deputy Chairperson**

**16.** The Minister shall appoint—

- (a) the Chairperson of the Council; and
- (b) the Deputy Chairperson of the Council;

from the members of the Council.

### **Remuneration and allowances**

**17. (1)** The members of the Council shall be paid such remuneration and allowances as are prescribed.

**(2)** Subsection (1) does not apply—

- (a)** in relation to remuneration—if there is a subsisting determination relating to the remuneration to be paid to the members; or
- (b)** in relation to an allowance of a particular kind—if there is a subsisting determination relating to an allowance of that kind to be paid to the members.

**(3)** In subsection (2), “determination” means a determination of the Remuneration Tribunal of the Commonwealth.

### **Leave of absence**

**18. (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.

### **Disclosure of interest**

**19. (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.

**Resignation**

**20.** A member of the Council may resign his or her office by writing signed by the member and delivered to the Minister.

**Termination of appointment**

**21. (1)** The Minister may terminate the appointment of a 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 a 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;
- (b) is absent, except on leave granted under section 18, from 3 consecutive meetings of the Council;
- (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.

**Acting members**

**22. (1)** The Minister may appoint a person to act as a 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;

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;
- (b) there is a defect or irregularity in connection with the person's appointment;
- (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.

### **Convening meetings**

**23. (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—

- (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.

**Procedure at meetings**

**24. (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 one 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)** At a meeting of the Council, 5 members including—

(a) 1 of the members referred to in paragraph 13 (1) (a);

(b) 1 of the members referred to in paragraph 13 (1) (b); and

(c) 1 of the members referred to in paragraph 13 (1) (c);

constitute a quorum.

**(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.

***Division 3—Advisory committees*****Establishment**

**25. (1)** The Council may constitute such advisory committees as it thinks necessary to assist it 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.

**Remuneration and allowances**

**26. (1)** The members of an advisory committee shall be paid such remuneration and allowances as are prescribed.



(2) Subsection (1) does not apply—

- (a) in relation to remuneration—if there is a subsisting determination relating to the remuneration to be paid to the members; or
- (b) in relation to an allowance of a particular kind—if there is a subsisting determination relating to an allowance of that kind to be paid to the members.

(3) In subsection (2), “determination” means a determination of the Remuneration Tribunal of the Commonwealth.

### **PART III—DUTIES RELATING TO OCCUPATIONAL HEALTH AND SAFETY**

#### **Duties of employers in relation to employees**

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

Penalty:

- (a) if the offender is a natural person—\$20,000; or
- (b) if the offender is a body corporate—\$100,000.

(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;
- (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;
- (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;

- (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;
- (e) to develop and maintain a policy relating to occupational health and safety that—
  - (i) enables effective co-operation between the employer and the employees in promoting and developing measures to ensure the employees' health, safety and welfare at work; and
  - (ii) provides adequate mechanisms for reviewing the effectiveness of those measures;
- (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;
- (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;
- (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.

### **Duty of employers in relation to third parties**

**28.** 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.

Penalty:

- (a) if the offender is a natural person—\$20,000; or
- (b) if the offender is a body corporate—\$100,000.

**Duties of persons in control of workplaces**

**29.** A person who has, to any extent, control of—

- (a) a workplace;
- (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.

Penalty:

- (a) if the offender is a natural person—\$20,000; or
- (b) if the offender is a body corporate—\$100,000.

**Duties of employees**

**30. (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;
- (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 co-operate with the employer, or that other person, to the extent necessary to enable the employer or other person to fulfil 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.

Penalty: \$20,000.

(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 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.

### **Duties of self-employed persons**

**31.** 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.

Penalty: \$20,000.

### **Duties of manufacturers in relation to plant and substances**

**32. (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;

- (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;
  - (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
  - (iii) the proper maintenance of the plant.

Penalty:

- (a) if the offender is a natural person—\$20,000; or
  - (b) if the offender is a body corporate—\$100,000.
- (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;
  - (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;
    - (ii) details of its composition;
    - (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.

**Penalty:**

- (a) if the offender is a natural person—\$20,000; or
- (b) if the offender is a body corporate—\$100,000.

**(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 first-mentioned person shall, for the purposes of this section, be taken to be the manufacturer of the plant or substance.

**Duties of suppliers in relation to plant and substances**

**33. (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;
- (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;
  - (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;
  - (iii) the steps that need to be taken in order to eliminate such a risk;
  - (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.

Penalty:

- (a) if the offender is a natural person—\$20,000; or
- (b) if the offender is a body corporate—\$100,000.

(2) For the purposes of subsection (1), where a person (in this subsection called 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;
- (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 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 ostensible supplier.

#### **Duties of persons erecting or installing plant in a workplace**

**34.** 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 employees who use the plant or constitutes a risk to their health.

Penalty:

- (a) if the offender is a natural person—\$20,000; or
- (b) if the offender is a body corporate—\$100,000.

**Reliance on information supplied or results of research**

**35. (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 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—

- (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.



## **PART IV—WORKPLACE ARRANGEMENTS**

### *Division 1—Health and safety representatives*

#### **Small employers not affected**

**36.** This Division applies only in relation to an employer who employs more than 20 employees.

#### **Work groups designated by employers**

**37. (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);

establish 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) is guilty of an offence punishable, on conviction, by—

- (a) if the offender is a natural person—a fine not exceeding \$1,000; or
- (b) if the offender is a body corporate—a fine not exceeding \$5,000.

**(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.

**(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 the employees;
- (b) the nature of each type of work performed by the employees;

- (c) the number and grouping of the employees who perform the same or similar types of work;
- (d) the workplaces, and the areas within the workplaces, where each type of work is performed;
- (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 one 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.

### **Work groups designated by Registrar**

**38. (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 employees within the time required by that subsection, the Registrar may establish designated work groups in respect of those employees.

(2) The Registrar 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 Registrar 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 Registrar shall have regard to the matters specified in paragraphs 37 (6) (a) to (f) (inclusive) 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 Registrar 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 \$100.

### **Work groups on construction sites**

**39. (1)** In this section—

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

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

(2) Where—

- (a) a person (in this section called the ‘principal contractor’) engages but does not employ another person (in this section called the ‘sub-contractor’) to carry out building and construction work for the principal contractor on a construction site; and

- (b) the sub-contractor employs another person (in this section called the 'worker') to perform that work;

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

(3) The Registrar shall not make a declaration unless the Registrar 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 sub-contractor, 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 and any other sub-contractor, 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 Registrar.

(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 IV have effect in relation to the principal contractor and the worker—

- (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, unless the contrary intention appears, 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 a reference to the principal contractor or worker, respectively; and
- (c) for the purposes of Divisions 1 and 4 of Part IV (other than subsection 45 (3), section 48 and subsection 59 (4)), the sub-contractor 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.

### **Selection**

**40. (1)** There shall not be more than one 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).

**(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) is guilty of an offence punishable, on conviction by a fine not exceeding \$100.

**Objections to selection**

**41. (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 (in this section called 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 Registrar in accordance with subsection (3);

the Registrar 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 Registrar—

- (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 Registrar 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 Registrar 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 Registrar 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 an 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) is guilty of an offence punishable, on conviction, by a fine not exceeding \$100.

### **Lists of health and safety representatives**

42. (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;
- (b) involved unions in relation to the designated workgroups; and
- (c) inspectors.

(2) An employer who, without reasonable excuse, contravenes subsection (1) is guilty of an offence punishable, on conviction, by a fine not exceeding \$100.

### **Powers**

43. 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 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;
  - (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;
- (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);

- (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;
- (d) where there is a health and safety committee in respect of the employer's employees—examine any of the records of that committee;
- (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;
- (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;
- (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
  - (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.

**Access to information**

**44.** 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.

### **Duties of employers**

**45. (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;
- (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
  - (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;
- (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);
- (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);
- (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
- (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.

Penalty:

- (a) if the offender is a natural person—\$1,000; or
- (b) if the offender is a body corporate—\$5,000.

(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.

Penalty:

- (a) if the offender is a natural person—\$1,000; or
- (b) if the offender is a body corporate—\$5,000.

(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 the site;

the sub-contractor 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.

Penalty:

- (a) if the offender is a natural person—\$1,000; or
- (b) if the offender is a body corporate—\$5,000.

### **Term of office**

**46. (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 re-selection.

**Resignation etc.**

47. (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;
- (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.

**Disqualification**

48. (1) The Registrar may, upon application by—

- (a) the employer of the employees in a designated work group;
- (b) if a declaration under section 39 is in force in respect of a construction site—any employer who is a sub-contractor to whom the declaration relates;
- (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 Registrar shall not disqualify a health and safety representative unless the Registrar 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 Registrar 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;

(b) the past record of the representative in exercising the powers of a health and safety representative;

(c) the effect (if any) on the public interest of the action of the representative; and

(d) such other matters as the Registrar thinks relevant.

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

### **Liability**

**49.** 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.

### **Deputy health and safety representatives**

**50. (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.

***Division 2—Provisional improvement notices***

**Issue**

**51. (1)** Where a health and safety representative for a designated work group believes on reasonable grounds that a person (in this section called “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, one 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.

(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 Registrar;
- (b) where the notice is given to an employee in connection with work performed by the employee for an employer—to that employer;
- (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.

Penalty: \$100.

(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.

### **Display**

**52. (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) is guilty of an offence punishable, on conviction, by—

- (a) if the offender is a natural person—a fine not exceeding \$1,000; or
- (b) if the offender is a body corporate—a fine not exceeding \$5,000.

### **Compliance**

**53.** 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.

Penalty:

- (a) if the offender is a natural person—\$10,000; or
- (b) if the offender is a body corporate—\$50,000.

### **Revocation**

**54. (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 Registrar as soon as practicable.

**Review**

**55. (1)** The responsible person in relation to whom a provisional improvement notice is in force or any other person (other than the Registrar) 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 Registrar;

request the Registrar to arrange for an inspector 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 Registrar 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;
- (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***

**Action by health and safety representatives**

**56. (1)** Where a health and safety representative for a designated work group believes on reasonable grounds that there is an immediate threat to 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 (in this section called “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 Registrar 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 Registrar 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.

**Alternative work**

**57.** 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).

***Division 4—Health and safety committee*****Functions**

**58. (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 co-operation 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.

**Duties of employers**

**59. (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.

Penalty:

- (a) if the offender is a natural person—\$1,000; or
- (b) if the offender is a body corporate—\$5,000.

**(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.

Penalty:

- (a) if the offender is a natural person—\$1,000; or
- (b) if the offender is a body corporate—\$5,000.

**(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 sub-contractor 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.

Penalty:

- (a) if the offender is a natural person—\$1,000; or
- (b) if the offender is a body corporate—\$5,000.

**Liability**

**60.** 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 V—INSPECTORS***Division 1—Inspections***Things connected with offences**

**61. (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.

**Inspections etc.**

**62. (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;

- (b) take into the premises such equipment and materials as the inspector considers necessary;
- (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;
- (d) inspect, make copies of, or take extracts from, a document referred to in subparagraph (c) (ii);
- (e) take such photographs, or make such sketches or recordings, as the inspector considers necessary;
- (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;
- (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.

### **Consent to entry**

**63.** 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.

### **Notice of removal**

**64. (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—

- (a) the employer for whom work is performed using the plant, substance or thing;

- (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.

#### **Return of certain seized articles**

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

### Search warrants

**66. (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;
- (b) to search the premises for things of the kind specified in the warrant; and
- (c) to seize any thing 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;
- (b) specify the nature of the relevant offence;
- (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;
- (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.

**Obstructing inspectors**

**67.** 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.

Penalty:

- (a) if the offender is a natural person—\$10,000 or imprisonment for 2 years, or both; or
- (b) if the offender is a body corporate—\$50,000.

**False information**

**68.** 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.

Penalty:

- (a) if the offender is a natural person—\$10,000 or imprisonment for 2 years, or both; or
- (b) if the offender is a body corporate—\$50,000.

***Division 2—Administration*****Registrar**

**69. (1)** For the purposes of this Act, there shall be an Occupational Health and Safety Registrar.

**(2)** The Minister shall, in writing, appoint a person to be the Registrar.

**(3)** In addition to performing the functions conferred on the Registrar by or under this Act or the regulations, the Registrar shall perform such other functions relating to occupational health and safety as the Minister directs.

**(4)** The Registrar may exercise any of the powers of an inspector under this Act or the regulations and, to that intent, a reference in this Act (other than in section 5, Division 2 of Part V and Part VII), or in the regulations, to an inspector shall be read as including a reference to the Registrar.



(5) The Minister shall issue to the Registrar an identity card that specifies the name and office of the Registrar and on which appears a recent photograph of the Registrar.

(6) A person who ceases to hold office as the Registrar and fails, without reasonable excuse, to return the identity card to the Minister upon ceasing to hold office is guilty of an offence punishable, on conviction, by a fine not exceeding \$100.

### **Acting Registrar**

70. The Minister may appoint a person to act as the Registrar—

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

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

### **Inspectors**

71. (1) The Registrar may, in writing, appoint a person to be an inspector for the purposes of this Act.

(2) An inspector shall, subject to this Act and the regulations, perform such duties as the Registrar directs.

### **Identity cards**

72. The Registrar shall issue to each inspector an identity card that specifies the name and appointment of the inspector and on which appears a recent photograph of the inspector.

### **Return of identity cards**

73. A person appointed to be an inspector shall not, without reasonable excuse, fail to return his or her identity card to the Registrar upon ceasing to be an inspector.

Penalty: \$100.

### **Liability**

74. An action or other proceeding, civil or criminal, does not lie against the Registrar 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.

**Delegation by Registrar**

**75.** The Registrar may delegate to any person any of the Registrar's powers under this Act or the regulations, other than the Registrar's powers under section 83.

**PART VI—IMPROVEMENT AND PROHIBITION NOTICES ETC.****Improvement notices**

**76. (1)** Where an inspector believes on reasonable grounds that a person (in this section called “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) is guilty of an offence punishable, on conviction, by—

- (a) if the offender is a natural person—a fine not exceeding \$1,000; or

(b) if the offender is a body corporate—a fine not exceeding \$5,000.

(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—that employer;
- (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.

### **Prohibition notices**

77. (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—

- (a) the part of the workplace at which the prohibited activity is not to be carried on;

- (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) is guilty of an offence punishable, on conviction, by—
- (a) if the offender is a natural person—a fine not exceeding \$1,000; or
  - (b) if the offender is a body corporate—a fine not exceeding \$5,000.
- (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;
  - (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.
- (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.

**Directions not to disturb workplace etc.**

**78. (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) is guilty of an offence punishable, on conviction, by—

- (a) if the offender is a natural person—a fine not exceeding \$1,000; or
- (b) if the offender is a body corporate—a fine not exceeding \$5,000.

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

- (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;

- (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.

### **Compliance**

79. A person to whom—

- (a) an improvement notice;
- (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.

Penalty:

- (a) if the offender is a natural person—\$10,000; or
- (b) if the offender is a body corporate—\$50,000.

## PART VII—REVIEW OF DECISIONS

### Reviewing authority

**80.** In this Part, “reviewing authority” means the body or person declared by the regulations to be the reviewing authority.

### Reviewable decisions

**81. (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 Registrar 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);
- (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 Registrar on a reconsideration under section 83 of a reviewable decision made by an inspector.

**Eligible persons**

**82. (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 Registrar shall be ascertained in accordance with Part 2 of the Schedule.

**Reconsideration of inspectors' decisions**

**83. (1)** The Registrar may reconsider a reviewable decision made by an inspector.

**(2)** The Registrar 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.

**(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 Registrar shall—

- (a) affirm or vary the decision; or
- (b) revoke the decision and, if the Registrar thinks appropriate, make a decision in substitution for the decision revoked.



(6) A reviewable decision made by an inspector, as varied by the Registrar on a reconsideration, or a decision of the Registrar 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 Registrar, unless the Registrar 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.

### **Review of decisions**

**84.** (1) A request to the reviewing authority for the review of a reviewable decision shall be made in writing.

(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 reviewing 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 reviewing authority makes an order to the contrary.

(4) Where an eligible person in relation to a reviewable decision requests the reviewing authority to review the decision, the authority shall 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.

(5) A reviewable decision of a person, as varied by the reviewing authority, or a decision of the reviewing 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 reviewing 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.

**PART VIII—MISCELLANEOUS****Notice of accidents etc.**

**85. (1)** Where, at or near a workplace at which an undertaking is being conducted by an employer, there is, arising out of the conduct of the undertaking—

- (a) an accident that causes—
  - (i) the death of a person;
  - (ii) an injury to a person other than an employee of the employer; or
  - (iii) an injury to an employee as a result of which the employee is incapacitated for work for the prescribed period; or
- (b) a dangerous occurrence;

the employer shall, in accordance with the regulations, give to the Registrar notice of the accident or dangerous occurrence, as the case may be.

**(2)** A person who, without reasonable excuse, contravenes subsection (1) is guilty of an offence, punishable on conviction, by—

- (a) if the offender is a natural person—a fine not exceeding \$10,000 or imprisonment for a period not exceeding 2 years, or both; or
- (b) if the offender is a body corporate—a fine not exceeding \$50,000.

**(3)** Without limiting the generality of regulations that may be made for the purposes of subsection (1) (other than paragraph (1) (a) (iii)), 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.

**Records of accidents etc.**

**86. (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 Registrar.

**(2)** A person who, without reasonable excuse, contravenes subsection (1) is guilty of an offence punishable, on conviction, by—

- (a) if the offender is a natural person—a fine not exceeding \$1,000; or

(b) if the offender is a body corporate—a fine not exceeding \$5,000.

(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.

### Codes of practice

87. (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 for the purposes of section 10 of the *Subordinate Laws Act 1989*.

(5) The Registrar 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;
- (b) specifying the place at which copies of the code to which the approval relates may be purchased; and

- (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 Registrar.

(6) The Registrar 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 Registrar.

### **Protected information**

**88. (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 first-mentioned person shall not disclose that information to any other person, unless the disclosure—

- (a) is necessary for the performance of a duty by the first-mentioned person under or in connection with this Act or the regulations;
- (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.

Penalty:

- (a) if the offender is a natural person—\$1,000; or
  - (b) if the offender is a body corporate—\$5,000.
- (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.

**(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.

### **Interfering with safety equipment**

**89. (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.

Penalty:

- (a) if the offender is a natural person—\$5,000 or imprisonment for one year, or both; or
- (b) if the offender is a body corporate—\$25,000.

**(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.

### **Interfering with workplace notices**

**90.** A person shall not, without reasonable excuse—

- (a) tamper with—
  - (i) a provisional improvement notice displayed in accordance with paragraph 52 (b);
  - (ii) an improvement notice displayed in accordance with paragraph 76 (4) (b);
  - (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.

Penalty:

- (a) if the offender is a natural person—\$5,000 or imprisonment for one year, or both; or
- (b) if the offender is a body corporate—\$25,000.

**Employer not to levy employees**

**91.** 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.

Penalty:

- (a) if the offender is a natural person—\$5,000 or imprisonment for one year, or both; or
- (b) if the offender is a body corporate—\$25,000.

**Employer not to discriminate**

**92.** An employer shall not—

- (a) dismiss an employee;
- (b) injure an employee in his or her employment;
- (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;
- (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);
  - (ii) a provisional improvement notice, an improvement notice or a prohibition notice; or
  - (iii) a direction under subsection 78 (1).

Penalty:

- (a) if the offender is a natural person—\$5,000 or imprisonment for one year, or both; or
- (b) if the offender is a body corporate—\$25,000.

### **Conduct of directors, servants and agents**

**93. (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.

**(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 first-mentioned 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.

#### **Contracting out prohibited**

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

#### **Civil liability not affected**

95. 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.

#### **Inconsistency with associated laws**

96. 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.

#### **Regulations**

97. (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, either absolutely or except in accordance with specified requirements, the performance of all work or specified work at a workplace or by employees at work;



- (b) prohibiting, either absolutely or except in accordance with specified requirements, the use of all plant or specified plant at a workplace or by employees at work;
- (c) prohibiting, either absolutely or except in accordance with specified requirements, the carrying out of all processes or a specified process at a workplace or by employees at work;
- (d) prohibiting, either absolutely or except in accordance with specified requirements, the storage or use of all substances or specified substances at a workplace or by employees at work;
- (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;
- (f) prohibiting, except in accordance with licences granted under the regulations, the use of specified plant or specified substances at a workplace or by employees at work;
- (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;
- (h) regulating the maintenance and testing of plant used at a workplace or by employees at work;
- (i) regulating the labelling or marking of substances used at a workplace or by employees at work;
- (j) regulating the transport of specified plant that is, or specified substances that are, for use at a workplace or by employees at work;
- (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;
- (l) requiring the taking of specified action to avoid accidents or dangerous occurrences;
- (m) providing for, or prohibiting, the taking of specified action in the event of accidents or dangerous occurrences;
- (n) providing for the employment at workplaces of persons to perform specified duties relating to the maintenance of occupational health and safety at workplaces;

- (o) regulating the provision and use, at a workplace or by employees at work, of protective clothing and equipment, safety equipment and rescue equipment;
- (p) providing for the monitoring of the health of employees and the conditions at workplaces;
- (q) requiring the keeping by employers of records of matters related to the occupational health and safety of employees;
- (r) providing for the provision of first aid equipment and facilities at workplaces;
- (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;
- (t) in relation to health and safety committees, including provision—
  - (i) relating to the establishment of such committees;
  - (ii) relating to the constitution, and selection of members, of such committees; and
  - (iii) relating to the performance of the functions of such committees;
- (u) in relation to the training of 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;
  - (ii) relating to the accreditation of persons who conduct training programs;
  - (iii) requiring health and safety representatives or members of such committees to undertake training programs; and
  - (iv) determining the liability for the fees and expenses incurred in respect of the attendance by health and safety representatives or members of such committees at training programs;
- (v) in relation to the reconsideration or review of reviewable decisions under Part VII, 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 penalties not exceeding \$1,000 for offences against the regulations.
  - (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.
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**SCHEDULE**

Subsections 82 (2) and (3)

**ELIGIBLE PERSONS****Part 1—Inspectors' Decisions**

Item	Reviewable Decisions	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; (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.

**SCHEDULE**—continued

## Part 2—Registrar's Decisions

Item	Reviewable Decisions	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.

**SCHEDULE—continued**

Item	Reviewable Decisions	Eligible Persons
8	Revoking an improvement notice under subsection 76 (8), a prohibition notice under subsection 77 (6) or a direction under subsection 78 (8)	<p>(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;</p> <p>(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</p> <p>(c) An involved union in relation to an employee whose work is affected by the notice or direction.</p>
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)	<p>(a) The person to whom the notice or direction was given; or</p> <p>(b) An employer whose undertaking is adversely affected by the refusal.</p>
10	A decision by the Registrar 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.

*[Presentation speech made in Assembly on 25 May 1989.]*