



Occupational Health and Safety (Commonwealth Employment) Act 1991

No. 30 of 1991

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SCHEDULE

GOVERNMENT BUSINESS ENTERPRISES



Occupational Health and Safety (Commonwealth Employment) Act 1991

No. 30 of 1991

**An Act to promote the occupational health and safety
of persons employed by the Commonwealth and
Commonwealth authorities, and for related purposes**

[Assented to 6 March 1991]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Occupational Health and Safety (Commonwealth Employment) Act 1991*.

Commencement

2. (1) Sections 1 and 2 commence on the day on which this Act receives the Royal Assent.

(2) Subject to subsection (3), the remaining provisions of this Act commence on a day or days to be fixed by Proclamation.

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(3) If a provision referred to in subsection (2) does not commence within the period of 6 months commencing on the day on which this Act receives the Royal Assent, that provision commences on the first day after the end of that period.

Objects

3. The objects of this Act are:

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

Saving of certain State and Territory laws

4. It is the intention of the Parliament that this Act is not to affect the operation of a law of a State or of a Territory that promotes the occupational health and safety of persons and is capable of operating, whether of its own force or as an applied provision within the meaning of the *Commonwealth Places (Application of Laws) Act 1970*, concurrently with this Act.

Interpretation

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

“**annual report**” means the annual report (if any) of a Department or Commonwealth authority to the responsible Minister for the Department or authority relating to the activities, operations, business or affairs of the Department or authority;

“**annual report of the Commission**” means the annual report of the Commission under section 63M of the *Audit Act 1901* as applied by section 90 of the *Commonwealth Employees' Rehabilitation and Compensation Act 1988*;

“**chief executive officer**”, in relation to a Commonwealth authority, means the person (by whatever name called) who is responsible for the administration of the authority;

“**Commission**” means the Commission for the Safety, Rehabilitation and Compensation of Commonwealth Employees established

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by section 68 of the *Commonwealth Employees' Rehabilitation
and Compensation Act 1988*;

“Commonwealth authority” means:

- (a) a body corporate established for a public purpose by or under a law of the Commonwealth or a law of a Territory (other than the Northern Territory or Norfolk Island); or
- (b) a body corporate:
 - (i) that is incorporated under a law of the Commonwealth or a State or Territory; and
 - (ii) in which the Commonwealth, or a body corporate referred to in paragraph (a), has a controlling interest; and
 - (iii) that is not a body corporate that the Minister, by notice published in the *Gazette*, has declared not to be a Commonwealth authority for the purposes of this Act;

“Commonwealth premises” means premises owned or occupied by the Commonwealth or by a Commonwealth authority;

“contract” includes any arrangement or understanding;

“contractor” means a natural person, other than a person who is employed by the Commonwealth or by a Commonwealth authority, who:

- (a) performs work on Commonwealth premises in connection with an undertaking being carried on by the Commonwealth, being work that is being performed, or that is connected with work that is being performed, under a contract entered into between the Commonwealth and that person or any other person (whether a natural person or not); or
- (b) performs work on Commonwealth premises in connection with an undertaking being carried on by a Commonwealth authority, being work that is being performed, or that is connected with work that is being performed, under a contract entered into between the authority and that person or any other person (whether a natural person or not);

“controlling interest”, in relation to a body corporate, means:

- (a) an interest in the body corporate that enables the person holding the interest to:
 - (i) control the composition of the board of directors of the body corporate; or
 - (ii) cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of the body corporate; or

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- (iii) control more than one-half of the issued share capital of the body corporate (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or
- (b) an interest in another body corporate that constitutes, under paragraph (a), a controlling interest in that other body corporate, being:
 - (i) a body corporate that, under paragraph (a), has a controlling interest in the first-mentioned body corporate; or
 - (ii) a body corporate that has such a controlling interest by another application or other applications of this paragraph;

“dangerous occurrence” means an occurrence, at a workplace, that is declared by the regulations to be a dangerous occurrence for the purpose of this definition;

“Department” means a body or instrumentality that is:

- (a) a Department within the meaning of the *Public Service Act 1922*; or
- (b) declared by the regulations to be a Department for the purposes of this Act;

“designated work group” means a group of employees established as a designated work group in accordance with section 24, or that designated work group as varied in accordance with that section, and, in relation to an employer, means such a group that consists entirely of employees of that employer;

“employee” has the meaning given in section 9;

“employer” means the Commonwealth or a Commonwealth authority;

“employing authority” means:

- (a) in relation to a person who is employed by the Commonwealth or who is a contractor of a kind referred to in paragraph (a) of the definition of “contractor” in this subsection:
 - (i) the person or body specified in the regulations to be the employing authority in relation to that first-mentioned person or in relation to a class of persons that includes that first-mentioned person; or
 - (ii) if the regulations do not so specify a person or body—the Secretary of the Department for which the first-mentioned person is performing work; or

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- (b) in relation to a workplace at which, or any plant, substance or thing with which, a person of the kind first-mentioned in paragraph (a) is performing work for the Commonwealth—the person or body who is, under paragraph (a), the employing authority in relation to that first-mentioned person;

“Government business enterprise” means:

- (a) a Commonwealth authority to which paragraph (a) of the definition of “Commonwealth authority” applies:
 - (i) that is specified in the Schedule; or
 - (ii) that the Minister, by instrument published in the *Gazette*, has declared to be a Government business enterprise for the purposes of this Act; or
- (b) a Commonwealth authority to which paragraph (b) of that definition applies;

“improvement notice” means an improvement notice issued under subsection 47 (1);

“investigation” means an investigation conducted under Part 4;

“investigator” means a person appointed under section 40 to be an investigator;

“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 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;

“own”, in relation to a workplace, plant, a substance or a thing, includes own jointly, or own in part, the workplace, plant, substance or thing;

“plant” includes any machinery, equipment or tool, and any component thereof;

“prohibition notice” means a prohibition notice issued under subsection 46 (1);

“registered union” means:

- (a) an organisation within the meaning of the *Industrial Relations Act 1988*; or
- (b) a body that is declared by the regulations to be a registered union for the purposes of this Act;

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“reviewing authority” means the Australian Industrial Relations Commission established under section 8 of the *Industrial Relations Act 1988*;

“Secretary”, in relation to a Department, means a person who:

- (a) in the case of a Department referred to in paragraph (a) of the definition of “Department”—has, in relation to the Department, the powers exercisable by a Secretary under the *Public Service Act 1922*; or
- (b) in the case of a Department referred to in paragraph (b) of the definition of “Department”—is the holder of the office or position declared by the regulations to be the office or position the holder of which is, for the purposes of this Act, to be the Secretary in relation to the Department;

“workplace” means any Commonwealth premises in which employees or contractors work, other than any part of such premises that is primarily used as a private dwelling.

(2) A reference in a particular provision of this Act to the responsible Minister in relation to an employer is a reference:

- (a) where the employer is the Commonwealth and, in the circumstances set out in that provision, is acting through a particular Department—to the Minister responsible for that Department; and
- (b) where the employer is a Commonwealth authority referred to in paragraph (a) of the definition of “Commonwealth authority”—to the Minister who is responsible for the administration of the Act or other law under which the Commonwealth authority is established; and
- (c) where the employer is a Commonwealth authority referred to in paragraph (b) of the definition of “Commonwealth authority”—to the Minister who is responsible for the administration of the Department dealing with matters that include the matters for the performance of which the Commonwealth authority was principally incorporated.

(3) For the purposes of this Act, an employee is to be taken to be at work at all times when the employee is performing work in connection with an undertaking carried on by an employer, whether or not the work is carried out at a workplace.

(4) A reference in this Act to an employee of an employer at a particular workplace is a reference to an employee who works at that workplace in the capacity of an employee of that employer.

(5) A reference in this Act to an accident includes a reference to the contracting of a disease.

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(6) A reference in this Act to a contravention of this Act or to a contravention of the regulations includes, where the contravention constitutes an offence, a reference to an offence against:

- (a) section 6, 7 or 7A of the *Crimes Act 1914*; or
- (b) subsection 86 (1) of that Act by virtue of paragraph (a) of that subsection;

being an offence that relates to the contravention.

(7) Where this Act refers to a Minister, specifying the Minister merely by reference to the Minister administering an Act, the reference to the Minister is to be taken to be a reference to:

- (a) if, for the time being, different Ministers administer the Act in respect of different matters:
 - (i) if 2 or more Ministers administer the Act in respect of the relevant matter—any one of those Ministers; or
 - (ii) if only one Minister administers the Act in respect of the relevant matter—that Minister; or
- (b) if paragraph (a) does not apply and, for the time being, 2 or more Ministers administer the Act—any one of those Ministers; or
- (c) if paragraphs (a) and (b) do not apply—the Minister for the time being administering the Act.

(8) An instrument referred to in the definition of “Government business enterprise” in subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Act not to prejudice national security

6. (1) Nothing in this Act requires or permits a person to take any action, or to refrain from taking any action, that would be, or could reasonably be expected to be, prejudicial to Australia’s national security.

(2) Without limiting, by implication, the generality of subsection (1), the Director-General of Security may, after consulting with the Minister, by notice in writing, declare that specified provisions of this Act do not apply, or apply subject to such modifications and adaptations as are set out in the declaration, in relation to:

- (a) premises or a workplace under the control of the Director-General; or
- (b) a person who is employed under section 84 of the *Australian Security Intelligence Organization Act 1979*; or
- (c) the performance of work by such a person for the purpose of carrying out a function set out in section 17 of that Act;

and such a declaration has effect accordingly.

(3) In administering the Australian Security Intelligence Organization and in the exercise of the power under subsection (2), the Director-

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General of Security must take into account the need to promote the objects of this Act to the greatest extent consistent with the maintenance of Australia's national security:

(4) A notice in writing under subsection (2) is a disallowable instrument for the purpose of section 46A of the *Acts Interpretation Act 1901*.

Act not to prejudice Australia's defence

7. (1) Nothing in this Act requires or permits a person to take any action, or to refrain from taking any action, that would be, or could reasonably be expected to be, prejudicial to Australia's defence.

(2) Without limiting, by implication, the generality of subsection (1), the Chief of the Defence Force may, after consulting with the Minister, by notice in writing, declare that specified provisions of this Act do not apply, or apply subject to such modifications and adaptations as are set out in the declaration, in relation to a specified member of the Defence Force, or members of the Defence Force included in a specified class of such members, and such a declaration has effect accordingly.

(3) In the exercise of the power under subsection (2), the Chief of the Defence Force must take into account the need to promote the objects of this Act to the greatest extent consistent with the maintenance of Australia's defence.

(4) A notice in writing under subsection (2) is a disallowable instrument for the purpose of section 46A of the *Acts Interpretation Act 1901*.

Act not to prejudice certain police operations

8. (1) Nothing in this Act requires or permits a person to take any action, or to refrain from taking any action, that would be, or could reasonably be expected to be, prejudicial to an existing or future covert operation or dangerous operation of the Australian Federal Police.

(2) In this section:

“**covert operation**” means the performance of a function or service under section 8 of the *Australian Federal Police Act 1979* where knowledge of the operation by an unauthorised person, may:

- (a) reduce the effectiveness of the performance of the function or service; or
- (b) expose a person to the danger of physical harm or death arising from the actions of another person;

“**dangerous operation**” means the performance of a function or service under section 8 of the *Australian Federal Police Act 1979* in circumstances where exposure of a member to the

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danger of serious physical harm or death, other than a danger arising from a cause within the control of the Australian Federal Police, is reasonably necessary for the effective performance of the function or the provision of the service;

“member” means a member or staff member of the Australian Federal Police;

“unauthorised person” in relation to a covert operation, means a person, including a member, who is not involved in the approval, planning or execution of the operation.

Employees

9. (1) A reference in this Act to an employee is a reference to a person who is employed by the Commonwealth or by a Commonwealth authority, whether the person is so employed under a law of the Commonwealth or of a Territory or under a contract of service or apprenticeship.

(2) Without limiting the generality of subsection (1):

- (a)** a member or staff member of the Australian Federal Police; or
- (b)** a member of the Defence Force; or
- (c)** a person (other than a person to whom subsection (3) applies) who is the holder of or is acting in:
 - (i)** an office established by a law of the Commonwealth, other than an office that is declared by the Minister, by notice in writing, to be an office in relation to which this Act does not apply; or
 - (ii)** an office that is established by a law of a Territory (other than the Northern Territory or Norfolk Island) and is declared by the Minister, by notice in writing, to be an office in relation to which this Act applies;

is, for the purposes of this Act, to be taken to be employed by the Commonwealth, and the person's employment is, for those purposes, to be taken to be constituted by the person's performance of duties as such a member or staff member of the Australian Federal Police or member of the Defence Force or the duties of that office, as the case may be.

(3) A person who:

- (a)** constitutes, or is acting as the person constituting, a Commonwealth authority; or
- (b)** is, or is acting as, a member of such an authority; or
- (c)** is, or is acting as, a member of a body established, by or under the Act establishing such an authority, for a purpose associated with the performance of the functions of the authority; or
- (d)** is a deputy of a member referred to in paragraph (b) or (c);

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is, for the purposes of this Act, to be taken to be employed by that authority, and the person's employment is, for those purposes, to be taken to be constituted by the performance of:

- (e) the duties of the authority; or
- (f) the person's duties as such a member or acting member; or
- (g) the person's duties as such a deputy;

as the case may be.

(4) This Act does not apply in relation to an officer or employee of the Public Service of an external Territory.

(5) The Minister may, by notice in writing, declare:

(a) that a person who is included in a class of persons specified in the notice, being a class of persons who engage in activities or perform acts:

- (i) at the request or direction, for the benefit, or under a requirement made by or under a law, of the Commonwealth; or
- (ii) at the request or direction, or for the benefit, of a Commonwealth authority;

is, for the purposes of this Act, to be taken to be employed by the Commonwealth, or by that authority, as the case may be; and

(b) that the employment of the person is, for those purposes, to be taken to be constituted by the performance by the person of such acts as are specified in the notice;

and such a declaration has effect accordingly.

(6) A notice in writing under paragraph (2) (c) or subsection (5) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Commonwealth to act through employing authority

10. (1) For the purposes of this Act and any other law:

- (a) duties imposed by this Act or the regulations on the Commonwealth as an employer shall, so far as they concern those persons employed by the Commonwealth, and those contractors, in relation to whom a particular person or body is the employing authority, be performed by that person or body; and
- (b) anything done by that person or body in the capacity of an employing authority has effect as if it had been done by the Commonwealth; and
- (c) anything served on, or otherwise given or notified to, that person or body in the capacity of an employing authority has

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effect as if it had been served on, or given or notified to, the Commonwealth.

(2) For the purposes of this Act and any other law, the duties imposed by this Act on the Commonwealth as an employer must, so far as they concern a workplace, or any plant, substance or thing, in relation to which one or more than one person or body is the employing authority, be performed by that person or body, or jointly by those persons or bodies, as the case requires.

Extent to which Act binds the Crown

11. (1) This Act binds the Crown in right of the Commonwealth.

(2) Nothing in this Act renders:

- (a) the Commonwealth; or
- (b) a Commonwealth authority other than a Government business enterprise; or
- (c) a person who is employed by:
 - (i) the Commonwealth; or
 - (ii) a Commonwealth authority other than a Government business enterprise;

liable to be prosecuted for an offence.

(3) Subsection (2) does not prevent the prosecution of:

- (a) a Government business enterprise; or
- (b) a person employed by a Government business enterprise.

Functions conferred on Commission

12. (1) For the purposes of paragraph 69 (g) of the *Commonwealth Employees' Rehabilitation and Compensation Act 1988*, the following additional functions are conferred on the Commission:

- (a) to ensure, in accordance with this Act and the regulations, that the obligations imposed by or under this Act are complied with;
- (b) to advise employers, employees or contractors, either on its own initiative or on request, on occupational health and safety matters affecting such employers, employees or contractors;
- (c) to collect, interpret and report information relating to occupational health and safety in Commonwealth employment;
- (d) to formulate policies and strategies relating to the occupational health and safety of employees;
- (e) to advise the Minister:
 - (i) on the most effective means of giving effect to the objects of this Act; and
 - (ii) on the making of regulations under this Act; and
 - (iii) on the approval of codes of practice under section 70;

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- (f) to accredit occupational health and safety training courses for the purposes of section 27;
- (g) to liaise with other bodies concerned with occupational health and safety.

(2) The Minister may, in writing, give a direction to the Commission concerning the performance of its functions, and the exercise of its powers, under this Act, and the Commission must comply with any direction so given.

Application of Act to external Territories etc.

13. (1) This Act extends to all the external Territories.

(2) This Act (other than Parts 3 and 4) has extra-territorial operation according to its terms.

Application of Act to workplaces controlled by contractors

14. (1) Despite anything in this Act, if a workplace is controlled by a contractor for construction or maintenance purposes:

- (a) this Act, other than section 20, does not apply to that workplace while it is so controlled; and
- (b) this Act, other than section 20, does not apply to work performed by contractors at that workplace while it is so controlled; and
- (c) this Act, other than Parts 1 and 2 and section 82, applies to work performed by employees at that workplace while it is so controlled:
 - (i) only if the regulations so provide; and
 - (ii) subject to such modifications and adaptations (if any) as are set out in the regulations.

(2) For the purposes of subsection (1), a workplace is not taken not to be controlled by a contractor simply because of the presence at the workplace of a Commonwealth employee if that employee has no right to direct the work of the persons working for the contractor.

Application of Act to employees working in non-Commonwealth premises

15. Where an employee ordinarily performs his or her work at a particular place but that place is not Commonwealth premises, this Act, other than Parts 1 and 2 and section 82, applies in relation to that employee or to that place of work:

- (a) only if the regulations so provide; and
- (b) subject to such modifications and adaptations (if any) as are set out in the regulations.

PART 2—OCCUPATIONAL HEALTH AND SAFETY

Division 1—General duties relating to occupational health and safety

Duties of employers in relation to their employees etc.

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

Penalty: in the case of a Government business enterprise—\$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; and
- (b) in relation to any workplace under the employer's control, to:
 - (i) ensure the workplace is safe for the employees and without risk to their health; and
 - (ii) 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; and
- (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 of substances; and
- (d) to develop, in consultation with any involved unions in relation to the employees of the employer, and with such other persons as the employer considers appropriate, a policy, relating to occupational health and safety, that will:
 - (i) enable 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) provide adequate mechanisms for reviewing the effectiveness of the measures; and
- (e) to provide to the employees, in appropriate languages, 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.

(3) A policy relating to occupational health and safety of the kind referred to in paragraph (2) (d) that is developed in consultation with

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involved unions must provide for the making of an agreement between the employer and such involved unions that:

- (a) provides appropriate mechanisms for continuing consultation, between the employer, such involved unions and the employees, on occupational health and safety matters; and
- (b) provides for such other matters (if any) as are agreed between the employer and such involved unions.

(4) The obligations of an employer in respect of the employer's employees that are set out in subsections (1) and (2) apply also in respect of persons who are contractors of that employer but only in relation to:

- (a) matters over which the employer has control; or
- (b) matters over which the employer would have had control but for an express provision in an agreement made by the employer with such a contractor to the contrary, being matters over which the employer would, in the circumstances, usually be expected to have had control.

(5) Without limiting the generality of subsection (1) insofar as that section applies in relation to an employer's employees, the employer contravenes that subsection if the employer fails to take all reasonably practicable steps:

- (a) to take appropriate action to monitor the employees' health and safety at work, and the conditions of the workplaces under the employer's control; or
- (b) to maintain appropriate information and records relating to the employees' health and safety; or
- (c) to provide appropriate medical and first aid services for the employees.

Duty of employers in relation to third parties

17. An employer must 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 or contractors are not exposed to risk to their health or safety arising from the conduct of the employer's undertaking.

Penalty: in the case of a Government business enterprise—\$100,000.

Duties of manufacturers in relation to plant and substances

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

- (a) to ensure that the plant is so designed and constructed as to be, when properly used, safe for employees and without risk to their health; and

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- (b) to carry out, or cause to be carried out, the research, testing and 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 is designed and has been tested; and
 - (ii) details of its design and construction; and
 - (iii) 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.

Penalty: \$20,000.

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

- (a) to ensure that the substance is so manufactured as to be, when properly used, safe for employees and without risk to their health; and
- (b) to carry out, or cause to be carried out, the research, testing and 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 is manufactured and has been tested; and
 - (ii) details of its composition; and
 - (iii) any conditions necessary to ensure that, when put to the use for which it was manufactured and tested, it will be safe for employees and without risk to their health; and
 - (iv) the first aid and medical procedures that should be followed if the substance causes injury.

Penalty: \$20,000.

(3) Where:

- (a) plant or a substance is imported into Australia by a person who is not the manufacturer of the plant or substance; and
- (b) at the time of the importation the manufacturer of the plant or substance does not have a place of business in Australia;

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

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(4) Nothing in this section affects the operation of the *Trade Practices Act 1974*, or of any other law of the Commonwealth, a State or a Territory that imposes an obligation on a manufacturer in respect of defective goods or in respect of information to be supplied in relation to goods.

Duties of suppliers in relation to plant and substances

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

- (a) to ensure that, at the time of supply, the plant or substance is in such condition as to be, when properly used, safe for employees and without risk to their health; and
- (b) to carry out, or cause to be carried out, the research, testing and 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 supply; and
 - (ii) any risk to the health and safety of employees to which the condition of the plant or substance may give rise unless it is properly used; and
 - (iii) the steps that need to be taken in order to eliminate such risk; and
 - (iv) in the case of a substance—the first aid and medical procedures that should be followed in the event of the condition of the substance causing injury to an employee.

Penalty: \$20,000.

(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; and
- (b) has, in the course of that business, acquired an interest in the plant or substance solely for the purpose of financing its acquisition by 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;

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

(3) Nothing in this section affects the operation of the *Trade Practices Act 1974*, or of any other law of the Commonwealth, a State or a Territory that imposes an obligation in respect of the sale or supply of goods or in respect of the information to be supplied in relation to goods.

Duties of person erecting or installing plant in a workplace

20. (1) A person who erects or installs any plant in a workplace for the use of employees at work must 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: \$20,000.

(2) Nothing in this section affects the operation of the *Trade Practices Act 1974*, or of any other law of the Commonwealth, a State or a Territory that imposes an obligation in respect of the erection or installation of goods or the supply of services.

Duties of employees in relation to occupational health and safety

21. (1) An employee must, at all times while at work, take all reasonably practicable steps:

- (a) to ensure that the employee does not take any action, or make any omission, that creates a risk, or increases an existing risk, to the health or safety of the employee, or of other persons (whether employees or not) at or near the place at which the employee is at work; and
- (b) in respect of any duty or obligation imposed on the employee's employer, or on any other person, by or under this Act or the regulations, to 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: in the case of an employee who is employed by a Government business enterprise—\$5,000.

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(2) Nothing in subsection (1) is to be taken to imply that the choice, or manner of use, or choice and manner of use, of equipment of the kind referred to in subparagraph (1) (c) (ii) is not a matter that may be, consistent with the requirements of this Act and of the regulations:

- (a) agreed on between the employer and any involved union in relation to the employees of that employer; or
- (b) agreed on 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 of this section) 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 must 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 of this section) 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 must 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.

Reliance on information supplied or results of research

22. (1) Without limiting the generality of what constitutes the taking of reasonably practicable steps as required by section 16 or 17, for the purpose of the application of that section in relation to the use of plant or a substance, a person on whom an obligation is imposed under that section is to be taken to have taken such reasonably practicable steps as that section requires, in relation to the use of the 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 the information, supplied by the manufacturer or the supplier of the plant or substance, 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 what constitutes the taking of reasonably practicable steps as required by section 20, for the purpose of the application of that section in relation to the erection or installation of plant in a workplace, a person on whom an obligation is imposed under that section is to be taken to have taken such reasonably practicable steps as that section requires to the extent that:

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- (a) the person ensured, as far as is reasonably practicable, that the erection or installation of the plant was in accordance with information, supplied by the manufacturer or the supplier of the plant, 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.

(3) Without limiting the generality of what constitutes the taking of reasonably practicable steps as required by section 18 or 19 for the purpose of the application of that section in relation to the carrying out of research, testing and examination of plant or a substance, a person on whom an obligation is imposed under that section is to be taken to have taken such reasonably practicable steps as that section requires, in relation to the carrying out of research, testing and examination of the plant or substance, 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.

Division 2—Specific duties relating to occupational health and safety

Regulations relating to occupational health and safety

23. (1) Subject to this Act, the regulations may make provisions relating to any matter affecting, or likely to affect, the occupational health and safety of employees or contractors.

(2) Without limiting the generality of subsection (1), those regulations may make 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 or contractors at work; and
- (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 or contractors at work; and
- (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 or contractors at work; and
- (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 or contractors at work; and

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- (e) specifying the form in which information required to be made available to an employer under paragraph 18 (1) (c) or 19 (1) (c) is to be so made available; and
- (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 or contractors at work; and
- (g) providing for the issue, variation, renewal, transfer, suspension and cancellation of such licences, the conditions to which the licences may be subject and the fees payable for the issue, variation or transfer of the licences; and
- (h) regulating the maintenance and testing of plant used at a workplace or by employees or contractors at work; and
- (j) regulating the labelling or marking of substances used at a workplace or by employees or contractors at work; and
- (k) regulating the transport of specified plant that is, or specified substances that are, for use at a workplace or by employees or contractors at work; and
- (m) prohibiting the performance, at a workplace or by employees or contractors at work, of specified activities or work except:
 - (i) by persons who satisfy requirements of the regulations as to qualifications, training or experience; or
 - (ii) under the supervision specified in the regulations; and
- (n) requiring the taking of specified action to avoid accidents or dangerous occurrences; and
- (p) providing for, or prohibiting, the taking of specified action in the event of accidents or dangerous occurrences; and
- (q) providing for the employment at workplaces of persons to perform specified duties relating to the maintenance of occupational health and safety at workplaces; and
- (r) regulating the provision and use, at a workplace or by employees or contractors at work, of protective clothing and equipment, safety equipment and rescue equipment; and
- (s) providing for the monitoring of the health of employees and the conditions at workplaces; and
- (t) requiring the keeping by employers of records of matters related to the occupational health and safety of employees; and
- (u) providing for the provision of first aid equipment and facilities at workplaces.

PART 3—WORKPLACE ARRANGEMENTS

Division 1—Health and safety representatives

Designated work groups

24. (1) A request to an employer to enter into consultations to establish designated work groups in respect of employees of the

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employer, or to vary designated work groups that have already been established, may be made by:

- (a) if there are involved unions in relation to employees of the employer—any such involved union; or
 - (b) if there is no involved union in relation to any employee of the employer—any such employee.
- (2) The employer may, at any time, and must, within 14 days after receiving such a request, enter into such consultations with:
- (a) if there are involved unions in relation to employees of the employer—each such involved union; or
 - (b) if there is no involved union in relation to any employee of the employer—the employee who made the request.
- (3) Where an employer believes that designated work groups should be varied, the employer may, at any time, enter into consultations concerning the variation of the designated work groups with:
- (a) if there are involved unions in relation to employees of the employer—each such involved union; or
 - (b) if there is no involved union in relation to any employee of the employer—the health and safety representative of each designated work group proposed to be varied.
- (4) If, in the course of consultations under subsection (2) or (3), there is a disagreement between any of the parties to the consultation concerning the manner of establishing or varying a designated work group, any party may, for the purpose of facilitating that consultation, refer the matter of disagreement to the reviewing authority and, where this is done, the parties to the disagreement must complete the consultation in accordance with the resolution of that matter by the reviewing authority.
- (5) Within 14 days after the completion of consultations concerning the establishment of the designated work groups, the employer must, by notifying the employees of the employer, establish the designated work groups in accordance with the outcome of the consultations.
- (6) Within 14 days after the completion of consultations concerning the variation of designated work groups that have already been established, the employer must, if it has been determined that the variation of some or all of those designated work groups is justified, by notifying the employees of the employer who are affected by the variation, vary the designated work groups in accordance with the outcome of the consultations.
- (7) Consultations relating to the establishment or variation of a designated work group must be directed principally at the determination of the manner of grouping employees:

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

and, for these purposes, the parties to the consultations must have regard, in particular, to:

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

(8) The designated work groups must be established in such a manner that, and must only be varied in such a manner that, so far as is reasonably practicable, each of the employees is included in a designated work group.

(9) All of an employer's employees may be included in one designated work group.

Health and safety representatives

25. (1) One health and safety representative may be selected for each designated work group.

(2) A person is not eligible for selection as the health and safety representative for a designated work group unless the person is an employee included in the group.

(3) A person is to be taken to have been selected as the health and safety representative for a designated work group if:

- (a) all of the employees included in the group unanimously agree to the selection of the person as the health and safety representative of the group; or
- (b) the person is elected as the health and safety representative of the group.

(4) An election for a health and safety representative for the designated work group may be conducted:

- (a) if there is only one involved union in relation to the group—by that involved union; or

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- (b) if there is more than one involved union and all the involved unions are in agreement that a specified one of those unions should conduct the election—by that specified union; or
- (c) if there is no involved union in relation to the group—by a person authorised by the Commission to conduct elections under this section.

(5) An employee in the designated work group may be a candidate in the election if and only if:

- (a) the employee is not disqualified under section 32; and
- (b) where an involved union in relation to the group is conducting the election—the employee is nominated by an involved union in relation to the group.

(6) All the employees in the designated work group are entitled to vote in the election.

(7) Where there is only one candidate for the election, that person is to be taken to have been elected.

(8) Where a person is selected as the health and safety representative for a designated work group:

- (a) if the person is selected by agreement in accordance with paragraph (3) (a)—the person; and
- (b) if the person is selected by election in accordance with paragraph (3) (b)—the involved union or other person authorised under subsection (4) to conduct the election;

must, as soon as practicable after the person has been so selected, inform the employer of all the employees included in the group of the name of the person so selected.

(9) As soon as practicable after being so informed, the employer must cause a notice that the person so selected is the health and safety representative for the 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.

(10) An employer must prepare and keep up to date a list of all the health and safety representatives of designated work groups comprising employees performing work for the employer, and must ensure that that list is at all reasonable times available for inspection by:

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

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Term of office

26. Subject to this Part, a health and safety representative for a designated work group holds office:

- (a) if, in consultations that took place under section 24, the parties to the consultations agreed to the period for which the health and safety representative for the group was to hold office—for such a period; or
- (b) if paragraph (a) does not apply—for 2 years;

commencing on the commencement of the day on which he or she was selected to be the health and safety representative for the group, but is eligible to be selected for further terms of office.

Training of health and safety representatives

27. (1) A health and safety representative for a designated work group must undertake a course of training relating to occupational health and safety that is accredited by the Commission for the purposes of this section.

(2) The employer of the employees in a designated work group must permit the health and safety representative for the group to take such time off work, without loss of remuneration or other entitlements, as is necessary to undertake the training.

Powers of health and safety representatives

28. (1) A health and safety representative for a designated work group may, for the purposes of promoting or ensuring the health and safety at work of the employees in the designated work group:

- (a) in respect of a workplace at which work is performed, for the employer of all of the employees in the group, by some or all of those employees, do all or any of the following:
 - (i) inspect the whole or any part of the workplace if:
 - (A) there has, in the immediate past, been an accident or a dangerous occurrence at the workplace, or there is an immediate threat of such an accident or dangerous occurrence; or
 - (B) the health and safety representative has given the employer reasonable notice of the inspection;
 - (ii) make a request to an investigator or to the Commission that an investigation be conducted at the workplace;
 - (iii) accompany an investigator during any investigation at the workplace by the investigator (whether or not the investigation is being conducted as a result of a request made by the health and safety representative);
 - (iv) if there is no health and safety committee in respect of the employer's employees at the workplace—represent

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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;

- (v) where a health and safety committee has been established in respect of the employer's employees at the workplace—examine any of the records of that committee; and
- (b) investigate complaints made by any of the employees in the group to the health and safety representative concerning the health and safety of any of the employees at work; and
- (c) 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 investigator; or
 - (ii) the employer or a person representing the employer; and
- (d) obtain access to:
 - (i) any information under the employer's control relating to risks to health and safety of any employees:
 - (A) at any workplace under the employer's control; or
 - (B) arising from the conduct by the employer of an undertaking or from plant or substances used for the purposes of the undertaking; and
 - (ii) subject to subsection (6), any information under the employer's control relating to the health and safety of any of the employer's employees; and
- (e) issue provisional improvement notices in accordance with section 29.

(2) A health and safety representative for a designated work group is entitled, in the exercise of his or her powers, to be assisted by a consultant.

(3) A health and safety representative for a designated work group must not:

- (a) be assisted by a consultant at a workplace at which work is performed for an employer of the employees in the group; or
- (b) provide to a consultant information which has been provided to the health and safety representative by an employer under paragraph (1) (d);

unless the employer or the Commission has, in writing, agreed to the provision of that assistance at that workplace or the provision of that information, as the case may be.

(4) An employer does not, by reason of the agreement of the employer under subsection (3) to the provision of assistance by a

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consultant, become liable for any remuneration or other expenses incurred in connection with the consultant's activities.

(5) Where a health and safety representative for a designated work group is being assisted by a consultant, the consultant is entitled to be present with the representative at any interview, concerning health and safety at work, between an employee in the group and:

- (a) an investigator; or
- (b) the employer or a person representing the employer;

if, and only if, the employee concerned consents to the presence of the consultant.

(6) The health and safety representative is not entitled, or, where the health and safety representative is assisted by a consultant, the health and safety representative and the consultant are not entitled, under subparagraph (1) (d) (ii), to have access:

- (a) to information in respect of which the employer is entitled to claim, and does claim, legal professional privilege; and
- (b) to information of a confidential medical nature relating to a person who is or was an employee of the employer unless:
 - (i) the person has delivered to the employer a written authority permitting the health and safety representative, or, the health and safety representative and the consultant, as the case requires, 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.

(7) Nothing in this Act is to be read as:

- (a) imposing an obligation on a person to exercise any power conferred on the person because the person is a health and safety representative; or
- (b) rendering a person liable in civil proceedings because of:
 - (i) a failure to exercise such a power; or
 - (ii) the manner in which such a power was exercised.

Provisional improvement notices

29. (1) Where a health and safety representative for a designated work group believes, on reasonable grounds, that a person:

- (a) is contravening a provision of this Act or the regulations; or
- (b) has contravened a provision of this Act or the regulations and is likely to contravene that provision again;

being a contravention that affects or that may affect one or more employees included in the group, the representative must enter into

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consultations with the person supervising the work performed by the employee or employees in an attempt to reach agreement on rectifying the contravention or preventing the likely contravention.

(2) If, in the health and safety representative's opinion, agreement is not reached within a reasonable time, the health and safety representative may issue a provisional improvement notice to the person (in this section called the "responsible person") responsible for the contravention.

(3) Where the responsible person is an employer but it is not practicable to issue the notice to the employer by giving it to the employer, the notice may be issued to the employer by giving it to the person who is, or who may reasonably be presumed to be, for the time being, in charge of the activity, undertaken by the employer, in connection with which, in the health and safety representative's opinion, the employer is contravening, or is likely to contravene, this Act or the regulations and, where the notice is so issued, a copy of the notice must be given to the employer as soon as practicable thereafter.

(4) The notice must:

- (a) specify the contravention of the provision of this Act or the regulations that, in the health and safety representative's opinion, is occurring or is likely to occur, and set out the reasons for that opinion; and
- (b) specify a period of not less than 7 days commencing on the day after the notice is issued, being a period that is, in the representative's opinion, reasonable, within which the responsible person is to take action necessary to prevent any further contravention of the provision or to prevent the likely contravention of the provision, as the case may be.

(5) The notice may specify action that the responsible person is to take during the period specified in the notice.

(6) Where, in the health and safety representative's opinion, it is appropriate to do so, the representative may, in writing and before the end of the period, extend the period specified in the notice.

(7) Upon issuing the notice, the health and safety representative must give a copy of the notice to:

- (a) where the notice is issued to an employee in connection with work performed by the employee for an employer—that employer; and
- (b) where the notice relates to any workplace, plant, substance or thing that is owned by a person, not being the responsible person or a person who is an employer referred to in paragraph (a)—that owner; and

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(c) where the notice is issued to a person (not being an employer) who owns any workplace, plant, substance or thing by reason of which a contravention of this Act or the regulations has occurred or is likely to occur—the employer of the employees who work in that workplace or who use that plant, substance or thing.

(8) Within 7 days after the notice is issued, the responsible person, or any other person, to whom a copy of the notice has been given under subsection (7), may make a request to the Commission or to an investigator that an investigation of the matter the subject of the notice be conducted.

(9) Upon the request being made, the operation of the notice is suspended pending the determination of the matter by an investigator.

(10) As soon as possible after a request is made, an investigation must be conducted of the work that is the subject of the disagreement, and the investigator conducting the investigation must:

- (a) confirm, vary or cancel the notice and notify the responsible person and any person to whom a copy of the notice has been given under subsection (2) accordingly; and
- (b) make such decisions, and exercise such powers, under Part 4, as the investigator considers necessary in relation to the work.

(11) Where the investigator varies the notice, the notice as so varied has effect, and, except in so far as it imposes additional obligations on the responsible person, is to be taken to have always had effect, accordingly.

(12) Where the notice is issued to an employer, the employer must:

- (a) notify each employee who is performing work for the employer and who is affected by the notice of the fact of the issue of the notice; and
- (b) until the notice ceases to have effect, cause a copy of the notice to be displayed at or near each workplace at which the work that is the subject of the notice is being performed.

(13) The notice ceases to have effect if:

- (a) it is cancelled by an investigator or by the health and safety representative; or
- (b) the responsible person:
 - (i) takes such action, if any, as is specified in the notice; or
 - (ii) if no action is so specified—takes the action necessary to prevent the further contravention, or likely contravention, with which the notice is concerned.

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(14) The responsible person:

- (a) must ensure that, to the extent that the notice relates to any matter over which the person has control, the notice is complied with; and
- (b) must 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.

(15) For the purposes of section 48, where the investigator confirms or varies the notice, the investigator is to be taken to have decided, under section 47, to issue an improvement notice in those terms.

Duties of employers in relation to health and safety representatives

30. (1) The employer of all the employees included in a designated work group for which there is a health and safety representative must:

- (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 and safety at work of the employees; and
- (b) in respect of a workplace at which some or all of the employees perform work for the employer:
 - (i) permit the health and safety representative to make such inspection of the workplace as the representative is entitled to make in accordance with subparagraph 28 (1) (a) (i), and to accompany an investigator during any investigation at the workplace by the investigator; 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; and
- (c) permit the health and safety representative to be present at any interview at which the representative is entitled to be present under paragraph 28 (1) (c); and
- (d) subject to subsections (2) and (3), provide to the health and safety representative access to any information to which the representative is entitled to obtain access in accordance with subparagraph 28 (1) (d) (i) or (ii) and to which access has been requested; and
- (e) permit the health and safety representative to take such time off work, without loss of remuneration or other entitlements, as is necessary to exercise the powers of a health and safety representative; and

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- (f) provide the health and safety representative with access to such facilities as are:
 - (i) prescribed for the purposes of this paragraph; or
 - (ii) necessary for the purposes of exercising the powers of a health and safety representative.

(2) An employer must 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.

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

Resignation etc. of health and safety representative

31. (1) A person must cease to be the health and safety representative for the designated work group if:

- (a) the person resigns as the health and safety representative; or
- (b) the person ceases to be an employee included in the designated work group; or
- (c) the person's term of office expires without the person having been selected, under section 25, to be the health and safety representative for the designated work group for a further term; or
- (d) the person is disqualified under section 32.

(2) A person may resign as the health and safety representative for a designated work group:

- (a) if the person was last selected as the health and safety representative in an election conducted by an involved union in relation to the group—by notice in writing delivered to the involved union that nominated the person as a candidate in the election; or
- (b) in any other case—by notice in writing delivered to the employer of all the employees included in the group.

(3) Where a person has resigned as the health and safety representative for a designated work group:

- (a) if paragraph (2) (a) applies—the involved union to which the notice of resignation was delivered; or
- (b) in any other case—the person;

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must notify the employees included in the group, and, in a case to which paragraph (2) (a) applies, the employer of all those employees, of the resignation.

(4) Where a person has ceased to be the health and safety representative for a designated work group because of paragraph (1) (b), the person must notify in writing:

- (a) the employees included in the group; and
- (b) the employer of all those employees; and
- (c) where the person was last selected as the health and safety representative in an election conducted by an involved union in relation to the group—the involved union, in relation to the group, that nominated the person as a candidate in the election;

that the person has ceased to be the health and safety representative for that designated work group.

Disqualification of health and safety representatives

32. (1) An application for the disqualification of a health and safety representative for a designated work group may be made to the Commission by the employer of all the employees included in the designated work group, or by an involved union in relation to the designated work group, on one or both of the following grounds:

- (a) that action taken by the representative in the exercise or purported exercise of a power under subsection 28 (1) or any other provision of this Act 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;
- (b) that 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 the employer.

(2) Where, upon an application by an employer under subsection (1), the Commission is satisfied that the health and safety representative has acted in a manner referred to in paragraph (1) (a) or (b), the Commission may, after having regard to:

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

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(d) such other matters as the Commission thinks relevant;
disqualify the representative, for a specified period not exceeding 5 years, from being a health and safety representative for any designated work group.

Deputy health and safety representatives

33. (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 is to be selected in the same manner as a health and safety representative under section 25.

(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) applies in relation to the deputy health and safety representative accordingly.

Division 2—Health and safety committees

Health and safety committees

34. (1) A health and safety committee must be established in respect of the employer's employees at a particular workplace if:

- (a) the number of employees of the employer who work at the workplace is normally not less than 50 (whether or not the employees are all at work at the workplace at the same time); and
- (b) the employees are included in one or more designated work groups in respect of the employer; and
- (c) the employer is requested to establish the committee by:
 - (i) a health and safety representative for the designated work group or for one of the designated work groups; or
 - (ii) an involved union in relation to such a group.

(2) The health and safety committee consists of:

- (a) the number of members specified in an agreement reached between the employer and:
 - (i) the involved unions in relation to the designated work group that includes, or the designated work groups that include, all of the employees; or
 - (ii) if there are no such involved unions—the employees; or

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- (b) where there is no such agreement—an equal number of members, chosen by employees, to represent the interests of the employees and members, chosen by the employer, to represent the interests of management.
- (3) The agreement referred to in paragraph (2) (a) may:
 - (a) specify the persons who are to be members to represent the interests of management; and
 - (b) provide for the manner in which persons who are to be members to represent the interests of employees are to be chosen.
- (4) Where regulations made for the purposes of this section specify procedures for the selection of persons as members of health and safety committees, to represent the interests of employees, an agreement referred to in paragraph (2) (a) must not provide for such members to be chosen in a manner inconsistent with the regulations.
- (5) A health and safety committee must hold meetings at least once every 3 months.
- (6) The procedure at meetings of a health and safety committee must, except to the extent provided for by the regulations, be the procedure agreed upon by the committee.
- (7) A health and safety committee must cause minutes of its meetings to be kept, and shall retain those minutes for a period of not less than 3 years.
- (8) Nothing in this section is to be taken as preventing an employer from establishing, in consultation with registered unions or any other persons, committees concerned with occupational health and safety in relation to undertakings carried on by the employer.

Functions of health and safety committees

- 35. (1)** A health and safety committee in respect of an employer's employees has the following functions:
- (a) to assist the employer:
 - (i) to develop and implement measures designed to protect; and
 - (ii) to review and update measures used to protect; the health and safety at work of the employees;
 - (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;

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(e) such other functions as are agreed upon between the employer and the health and safety 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.

(3) Nothing in this Act is to be read as:

- (a) imposing an obligation on a person to do any act, because the person is a member of a health and safety committee, in connection with the performance of a function conferred on the committee; or
- (b) rendering such a person liable in civil proceedings because of:
 - (i) a failure to do such an act; or
 - (ii) the manner in which such an act was done.

Duties of employers in relation to health and safety committees

36. (1) Where there is a health and safety committee in respect of employees of an employer, the employer must:

- (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 an 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 for the member adequately to participate in the performance by the committee of its functions.

(2) An employer must 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 an 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.

(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.

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Division 3—Emergency procedures

Action by health and safety representatives

37. (1) Where a health and safety representative for a designated work group has reasonable cause to believe that there is an immediate threat to the health or safety of one or more of the employees included in the group unless the employee ceases to perform particular work, the representative must:

- (a) inform a person (in this section called a “supervisor”) supervising the employee or employees 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 or employees 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 one or more of the employees, the supervisor must take such action as he or she considers appropriate to remove that threat, and any such action may include directing the employee or employees to cease, in a safe manner, to perform the work.

(3) Where a health and safety representative:

- (a) is unable to agree with a supervisor whom the representative has informed under paragraph (1) (a) of a threat to the health or safety of persons 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 a supervisor whom the representative has informed under paragraph (1) (b) that there is a need for a direction under that paragraph;

the representative or the supervisor may make a request to the Commission or to an investigator that an investigation be conducted of the work that is the subject of the disagreement.

(4) As soon as possible after a request is made, an investigation must be conducted of the work that is the subject of the disagreement, and the investigator conducting the investigation must make such decisions, and exercise such powers, under Part 4 as the investigator considers necessary in relation to the work.

Directions to perform other work

38. Where an employee has ceased to perform work, in accordance with a direction by a health and safety representative under paragraph 37 (1) (b), not being a cessation of work that continues after:

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- (a) the health and safety representative has agreed with a person supervising work at the workplace where the work was being performed, that the cessation of work was not, or is no longer, necessary; or
 - (b) an investigator has, under subsection 37 (4), made a decision that has the effect that the employee should perform the work;
- the employer may direct the employee to perform suitable alternative work, and the employee is to be taken, for all purposes, to be required to perform that other work under the terms and conditions of the employee's employment.

PART 4—ADVICE, INVESTIGATIONS AND INQUIRIES

Division 1—Advice

Commission may refer persons seeking advice to experts

39. Where the Commission has been requested to advise an employer, employee or contractor about an occupational health and safety matter in respect of which the Commission is of the opinion that a person other than a member of its staff has special knowledge or experience relevant to the request, the Commission may, in the exercise of its function to provide that advice, refer the employer, employee or contractor to that person.

Division 2—Investigations

Appointment of investigators

40. (1) There are to be such investigators as are necessary from time to time.

(2) The Commission may, by instrument in writing, appoint:

- (a) a member of the staff of the Commission; or
- (b) a person having knowledge of, and experience in, matters relating to occupational health and safety;

to be an investigator.

(3) The appointment of a person ceases to have effect if:

- (a) the Commission revokes the appointment; or
- (b) the person, by written notice given to the Commission, resigns the appointment.

(4) The Commission may, by notice published in the *Gazette*, give directions specifying the manner in which, and any conditions subject to which, powers conferred on investigators under this Part are to be exercised and where it does so, the powers of investigators must be exercised in accordance with those directions.

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(5) The Commission may, by notice in writing, impose restrictions, not being restrictions inconsistent with any direction in force under subsection (4), on the powers that are conferred on a particular investigator under this Part, being an investigator who is not a member of the staff of the Commission, and where it does so, the powers of the investigator are, for the purposes of this Act, to be taken to have been restricted accordingly.

(6) The Commission must issue to an investigator an identity card in a prescribed form.

(7) An investigator must carry the identity card at all times when exercising powers or performing functions as an investigator.

(8) The regulations may regulate the appointment, and prescribe the qualifications, of investigators.

Investigations

41. (1) An investigator who is a member of the staff of the Commission may, at any time, conduct an investigation:

- (a) to ascertain whether the requirements of, or any requirements properly made under, the Act or the regulations are being complied with; or
- (b) concerning a contravention or possible contravention of this Act or the regulations; or
- (c) concerning an accident or dangerous occurrence that has happened in the performing of work for an employer.

(2) The Commission may direct an investigator who is not a member of the staff of the Commission to conduct an investigation:

- (a) to ascertain whether the requirements of, or any requirements properly made under, the Act or the regulations are being complied with; or
- (b) concerning a contravention or possible contravention of this Act or the regulations; or
- (c) concerning an accident or dangerous occurrence that has happened in the performing of work for an employer;

and the investigator must, unless the Commission revokes the direction, conduct an investigation accordingly.

(3) The Commission may, in writing, direct an investigator, whether a member of the staff of the Commission or not, to conduct an investigation concerning the occupational health and safety policies and practices of a Department or Commonwealth authority, and the investigator must, unless the Commission revokes the direction, conduct an investigation accordingly.

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(4) Before giving a direction under subsection (3), the Commission must inform the Secretary of the Department, or the chief executive officer of the Commonwealth authority, as the case may be, of:

- (a) the fact that an investigation of the Department or authority is to be conducted; and
- (b) the subject matter of the proposed investigation.

(5) An involved union may make a request to an investigator or to the Commission that an investigation be conducted at a workplace, being a workplace at which an employee, who is a member of the union, performs work for an employer.

Power of entry

42. (1) In conducting an investigation, an investigator may, to the extent that it is reasonably necessary to do so in connection with the investigation, enter, at any reasonable time during the day or night, a workplace and:

- (a) search the workplace; or
- (b) inspect, examine, take measurements of or conduct tests concerning the workplace or any plant, substance or thing at the workplace; or
- (c) take photographs, or make sketches, of the workplace or any plant, substance or thing at the workplace.

(2) Immediately upon entering the workplace, an investigator must take all reasonable steps to notify:

- (a) the person who is for the time being in charge of operations at the workplace; and
- (b) if there is a health and safety representative for a designated work group in which there is included an employee performing, at the workplace, work to which the investigation may relate—that representative;

of the purpose for which the investigator has entered the workplace, and must, upon being requested to do so by the person referred to in paragraph (a), produce for inspection by that person:

- (c) the investigator's identity card; and
- (d) a copy of the Commission's written direction (if any) to conduct the investigation; and
- (e) a copy of the restrictions (if any) imposed on the powers of the investigator under subsection 40 (5).

(3) Where an investigator who has entered a workplace fails to produce documents for inspection as required by subsection (2) upon being requested to do so in accordance with that subsection, the investigator ceases to be entitled to remain at the workplace.

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Power to require assistance and information

43. (1) An investigator may, to the extent that it is reasonably necessary to do so in connection with the conduct of an investigation, require:

- (a) the Secretary of a Department or the chief executive officer of a Commonwealth authority; or
- (b) any person representing a Secretary or chief executive officer; or
- (c) any owner or occupier of a workplace at which the investigation is being conducted; or
- (d) any employee or contractor;

to give to the investigator reasonable assistance, to answer any questions put by the investigator, and to produce any documents requested by the investigator, in connection with the conduct of the investigation.

(2) A person must not, without reasonable excuse, fail to comply with a requirement made of the person under this section.

Penalty: \$3,000 or imprisonment for 6 months, or both.

(3) A person must not, in purported compliance with a requirement made of the person under this section, knowingly or recklessly give information that is false or misleading in a material particular.

Penalty: \$3,000 or imprisonment for 6 months, or both.

Power to take possession of plant, take samples of substances etc.

44. (1) In conducting an investigation, an investigator may, to the extent that it is reasonably necessary for the purposes of inspecting, examining, taking measurements of or conducting tests concerning, any plant, substance or thing at a workplace in connection with the investigation:

- (a) take possession of the plant, substance or thing and remove it from the workplace; or
- (b) take a sample of the substance or thing and remove that sample from the workplace.

(2) Upon taking possession of plant, a substance or a thing, or taking a sample of a substance or thing, the investigator shall, by notice in writing, inform:

- (a) the employer for which work is performed using the plant, substance or thing; and
- (b) where the plant, substance or thing is owned by a person other than an employer—that person; and
- (c) if there is a health and safety representative for a designated work group in which there is included an employee performing, at the workplace, work to which the investigation relates—that representative;

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of the taking of possession or the taking of the sample, as the case may be, and the reasons for it.

(3) Where an investigator gives a notice to an employer under subsection (2) concerning any plant, substance or thing of which the investigator has taken possession, the employer must cause a copy of the notice to be displayed in a prominent place at the workplace from which the plant, substance or thing was removed.

(4) Where the investigator takes possession of plant, a substance or a thing at a workplace for the purpose of inspecting, examining, taking measurements of or conducting tests concerning, the plant, substance or thing, the investigator must:

- (a) ensure that the inspection, examination, measuring or testing is conducted as soon as is reasonably practicable after the investigator takes possession of the plant, substance or thing; and
- (b) return the plant, substance or thing to the workplace as soon as is reasonably practicable after the inspection, examination, measuring or testing has been completed.

(5) As soon as is reasonably practicable after the completion of any such inspection, examination, measurement or testing, the investigator must give, to each person to whom the investigator is required under subsection (2) to notify of the removal, a written statement setting out the results of the inspection, examination, measurement or testing.

Power to direct that workplace etc. not be disturbed

45. (1) In conducting an investigation, an investigator may, if he or she is satisfied that it is reasonably necessary to give a direction under this subsection 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 conducting of tests concerning, a workplace or any plant, substance or thing at a workplace;

direct, by written notice given to the person who is for the time being in charge of operations at the workplace, that the person ensure that:

- (c) a particular workplace, or a specified part of a particular workplace; or
- (d) particular plant, or a particular substance or thing;

not be disturbed for the period, specified in the direction, that is, in the investigator's opinion, necessary in order to remove the threat or to allow the inspection, examination, measuring or testing to take place.

(2) The direction may be renewed by the giving of another direction under subsection (1) in the same terms.

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(3) Where an investigator gives a notice to a person under subsection (1), that person must cause the notice 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.

(4) As soon as is reasonably practicable after giving the direction, the investigator must take all reasonable steps to notify:

- (a) where the workplace, plant, substance or thing to which the direction relates is owned by a person other than an employer—that person; and
- (b) if there is a health and safety representative for a designated work group in which there is included an employee performing work:
 - (i) at a workplace or a 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 and the reasons for giving the direction.

(5) An employer who has control over the workplace, plant, substance or thing to which the direction relates, and whose employees use the workplace, plant, substance or thing in the performance of work for the employer, must ensure the direction is complied with.

Penalty: in the case of a Government business enterprise—\$25,000.

(6) The direction must include the reasons for the giving of the direction.

Power to issue prohibition notices

46. (1) Where, having conducted an investigation, an investigator forms the opinion that it is reasonably necessary to issue a prohibition notice to an employer in order to remove an immediate threat to the health or safety of any person, the investigator may issue such a notice, in writing, to the employer.

(2) The notice must be issued to the employer by giving it to the person who is, or who may reasonably be presumed to be, for the time being in charge of the activity, undertaken by the employer, in respect of which, in the investigator's opinion, the threat to health or safety has arisen.

(3) The notice must:

- (a) specify the activity in respect of which, in the investigator's opinion, the threat to health or safety has arisen, and set out the reasons for that opinion; and

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(b) either:

- (i) direct the employer to ensure that the activity is not engaged in; or
- (ii) direct the employer to ensure that the activity is not engaged in in a specified manner, being a manner that may relate to any one or more of the following:
 - (A) any workplace, or part of a workplace, at which the activity is not to be engaged in;
 - (B) any plant or substance that is not to be used in connection with the activity;
 - (C) any procedure that is not to be followed in connection with the activity.

(4) The employer must ensure that, to the extent that the notice relates to any matter over which the employer has control, the notice is complied with.

Penalty: in the case of a Government business enterprise—\$25,000.

(5) Where an investigator is satisfied that action taken by an employer to remove the threat to health and safety that caused the notice to be issued is not adequate to remove that threat, the investigator must inform the employer accordingly.

(6) The notice ceases to have effect when an investigator notifies the employer that the investigator is satisfied that the employer has taken adequate action to remove the threat to health or safety that caused the notice to be issued.

(7) In making a decision under subsection (5), an investigator may exercise such of the powers of an investigator conducting an investigation as the investigator considers necessary for the purposes of making the decision.

(8) The notice may specify action that may be taken in order to satisfy an investigator that adequate action has been taken to remove the threat to health and safety that caused the notice to be issued.

(9) The employer must:

- (a) give a copy of the notice to each health and safety representative (if any) for a group of the employer's employees performing work that is affected by the notice; 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.

(10) Where the notice relates to any workplace, plant, substance or thing that is owned by a person other than an employer, the investigator must, upon issuing the notice, give a copy of the notice to that person.

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Power to issue improvement notices

47. (1) Where, having conducted an investigation, an investigator forms the opinion that a person:

- (a) is contravening a provision of this Act or the regulations; or
- (b) has contravened a provision of this Act or the regulations and is likely to contravene that provision again;

the investigator may issue an improvement notice, in writing, to the person (in this section called the “**responsible person**”).

(2) Where the responsible person is an employer but it is not reasonably practicable to issue the notice to the employer by giving it to the employer, the improvement notice may be issued to the employer by giving it to the person who is, or who may reasonably be presumed to be, for the time being in charge of the activity, undertaken by the employer, in connection with which, in the investigator’s opinion, the employer is contravening, or is likely to contravene, this Act or the regulations and, where the notice is so issued, a copy of the notice must be given to the employer as soon as practicable thereafter.

(3) The notice must:

- (a) specify the contravention of the provision of this Act or the regulations that, in the investigator’s opinion, is occurring or is likely to occur, and set out the reasons for that opinion; and
- (b) specify a period, being a period that is, in the investigator’s opinion, reasonable, within which the responsible person is to take the action necessary to prevent any further contravention of the provision or to prevent the likely contravention of the provision, as the case may be.

(4) The notice may specify action that the responsible person is to take during the period specified in the notice under paragraph (3) (b).

(5) Where, in the investigator’s opinion, it is appropriate to do so, the investigator may, in writing and before the end of the period, extend the period specified in the notice.

(6) The responsible person must ensure that, to the extent that the notice relates to any matter over which the person has control, the notice is complied with.

Penalty: \$10,000.

(7) The penalty specified for a contravention of subsection (6) does not apply to a responsible person who:

- (a) being a natural person, is employed by an employer other than a Government business enterprise; or
- (b) being a body corporate, is an employer other than a Government business enterprise.

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- (8) Where the notice is issued to an employer, the employer must:
- (a) give a copy of the notice to each health and safety representative for a designated work group of the employer's employees performing work that is affected by the notice; 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.
- (9) Upon issuing the notice, the investigator must give a copy of the notice to:
- (a) where the notice is issued to an employee in connection with work performed by the employee for an employer—that employer; and
 - (b) where the notice relates to any workplace, plant, substance or thing that is owned by a person, not being the responsible person or a person who is an employer referred to in paragraph (a)—that owner; and
 - (c) where the notice is issued to a person (not being an employer) who owns any workplace, plant, substance or thing by reason of which a contravention of this Act or the regulations has occurred or is likely to occur—the employer of the employees who work in that workplace or who use that plant, substance or thing.

Appeals

48. (1) Where an investigator, in conducting an investigation or having conducted an investigation:

- (a) decides, under section 29, to confirm or vary a provisional improvement notice; or
 - (b) decides, under section 44, to take possession of plant, a substance or a thing at a workplace; or
 - (c) decides, under section 45, to direct that a workplace, a part of a workplace, plant, a substance or a thing not be disturbed; or
 - (d) decides, under section 46, to issue a prohibition notice; or
 - (e) decides, under section 46, that an employer to whom a prohibition notice has been issued has not taken adequate action to remove the threat to health and safety that caused the notice to be issued; or
 - (f) decides, under section 47, to issue an improvement notice;
- an appeal against the decision may be made, by notice in writing, to the reviewing authority by:
- (g) an employer affected by the decision; or
 - (h) a person to whom a notice has been issued under subsection 29 (2) or 47 (1); or
 - (j) the health and safety representative for a designated work group in which is included an employee affected by the decision; or

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- (k) an involved union in relation to such a designated work group;
or
- (m) where there is no such designated work group—an involved union in relation to an employee of the employer, being an employee who is affected by the decision; or
- (n) a person who owns any workplace, plant, substance or thing to which the decision referred to in paragraph (a), (b), (c) or (f) relates.

(2) Where an investigator, having conducted an investigation:

- (a) decides, under section 29 to cancel a provisional improvement notice; or
- (b) decides, under section 46, that an employer to which a prohibition notice has been issued has taken adequate action to remove the threat to health and safety that caused the notice to be issued;

an appeal against a decision may be made, by notice in writing, to the reviewing authority by:

- (c) the health and safety representative for a designated work group in which is included an employee affected by the decision; or
- (d) an involved union in relation to such a designated work group;
or
- (e) where there is no such designated work group—an involved union in relation to an employee of the employer, being an employee who is affected by the decision.

(3) Subject to this section, the making of an appeal against a decision referred to in subsection (1) or (2) 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.

(4) Where the decision appealed against is a decision, under section 47, to issue an improvement notice, the operation of the decision is suspended pending determination of the appeal, except to the extent that the reviewing authority makes an order to the contrary.

(5) Where the decision appealed against is a decision of an investigator, under section 29, to confirm or vary a provisional improvement notice the operation of which has been suspended pending the investigation of the matter to which the notice relates by the investigator, the operation of the notice is further suspended pending determination of the appeal, except to the extent that the reviewing authority makes an order to the contrary.

(6) The reviewing authority may affirm or revoke the decision appealed against under subsection (1) or (2) and may, if it revokes the

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decision, substitute for the decision such other decision, being a decision of the kind appealed against, as it thinks appropriate.

(7) Where the decision is varied, revoked or revoked with the substitution of another decision, the decision is to be taken to have effect, and to always have had effect, accordingly.

(8) Where the decision appealed against is a decision, under section 44, to take possession of plant, substance or a thing at a workplace, and the decision is not affirmed, the investigator who made the decision must ensure that, to the extent that the decision is not affirmed, the plant, substance or thing is returned to the workplace as soon as is reasonably practicable.

Liability of investigators

49. An investigator is not subject to any civil liability in respect of any act done, in good faith, in connection with:

- (a) the conduct of an investigation by the investigator; or
- (b) the exercise of any of his or her powers under this Part in relation to the investigation.

Notices not to be tampered with or removed

50. A person must not, without reasonable excuse:

- (a) tamper with any notice that has been displayed under subsection 44 (3), 45 (3), 46 (9) or 47 (8) while that notice is so displayed; or
- (b) remove any notice that has been so displayed:
 - (i) in the case of a notice displayed under subsection 44 (3)—until the plant or thing to which the notice relates is returned to the workplace from which it was removed; or
 - (ii) in the case of a notice displayed under subsection 45 (3), 46 (9) or 47 (8)—before the notice has ceased to have effect.

Penalty: \$3,000 or imprisonment for 6 months, or both.

Arrangements with States for services of State officers

51. Arrangements may be made in accordance with section 78 of the *Public Service Act 1922* for officers of the Public Service of a State or Territory to exercise the powers and perform the duties of investigators under this Part.

Division 3—Inquiries and reports

Application

52. This Division does not apply to a Government business enterprise.

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Report of investigation

53. (1) Where an investigator has conducted an investigation, the investigator must, as soon as is reasonably practicable, prepare a written report relating to the investigation and give the report to the Commission.

(2) The report must include:

- (a)** the investigator's conclusions from conducting the investigation and the reasons for those conclusions; and
- (b)** any recommendations that the investigator wishes to make arising from the investigation or those conclusions; and
- (c)** such other matters, if any, as are prescribed.

(3) As soon as is reasonably practicable after receiving the report, the Commission must:

- (a)** give a copy of the report, together with any written comments that it wishes to make, to the employer; and
- (b)** if it thinks it appropriate, give a copy of the report, together with those comments (if any), to the responsible Minister in relation to the employer.

(4) The Commission may, in writing, request the employer to provide to the Commission, within a reasonable period specified in the request, particulars of:

- (a)** any action that is proposed to be taken as a result of the conclusions or recommendations contained in the report; and
- (b)** where a notice has been issued under section 46 or 47 in relation to work being performed for the employer—any action that has been taken, or that is proposed to be taken, in respect of that notice;

and the employer must comply with the request.

(5) As soon as is reasonably practicable after the receipt of a report, the employer must give a copy of the report together with any written comment made by the Commission relating to the report:

- (a)** if there is at least one health and safety committee established in respect of some or all of the employer's employees to whose work the report relates—to each such committee; and
- (b)** if there is no such committee established in respect of some or all of the employer's employees to whose work the report relates, but some or all of those employees (in respect of which there is no such committee) are included in at least one designated work group for which there is a health and safety representative—to each such health and safety representative.

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Power to obtain information and documents

54. (1) Where the Commission has reason to believe that a person is capable of giving information or producing documents relevant to a matter dealt with in a report under subsection 53 (1), the Commission may, at any time after receiving the report and before commencing an inquiry under section 55, by notice in writing served on that person, require that person at such place, and within such period or on such date and at such time, as are specified in the notice, to give to the Commission any such information or to produce to the Commission any such documents.

(2) A person must not refuse or fail, without reasonable excuse, to give information or produce a document, when so required under subsection (1).

Penalty: \$1,000.

Commission may conduct public inquiry

55. (1) The Commission may, at any time after receiving a report under subsection 53 (1) and before preparing a report under section 65, conduct an inquiry into any matter arising out of the first-mentioned report.

(2) The Commission may hold the whole or any part of an inquiry in private if, in the opinion of the Commission, it is necessary or desirable in the public interest to do so.

(3) Where proceedings are held in private, the Commission may inform itself on any matter in such manner as it thinks fit.

(4) Where proceedings are held in public:

- (a)** evidence in the proceedings must, subject to this subsection, be taken on oath or affirmation; and
- (b)** the Commission may, if it thinks fit, permit a person appearing as a witness to give evidence by tendering, and verifying by oath or affirmation, a written statement; and
- (c)** where the Commission considers that the attendance of a person as a witness would cause serious hardship to the person, the Commission may permit the person to give evidence by sending to the Commission a written statement, verified in such manner as the Commission directs; and
- (d)** where evidence is given by a written statement in accordance with paragraph (b) or (c), the Commission must make available to the public in such manner as the Commission thinks fit the contents of the statement, other than any matter as to which the Commission is satisfied that its publication would be contrary to the public interest by reason of its confidential nature or any other reason.

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(5) Subject to this section:

- (a) the procedure to be followed at an inquiry is within the discretion of the Commission; and
- (b) the Commission is not bound by the rules of evidence.

Power to summon witnesses

56. A member of the Commission may, by instrument in writing, summon a person to appear before the Commission at a time and place specified in the summons to give evidence and produce such documents (if any) as are referred to in the summons.

Failure of witness to attend

57. A person served with a summons under section 56 must not, without reasonable excuse:

- (a) fail to attend as required by the summons; or
- (b) fail to appear and report from day to day unless excused, or released from further attendance, by a member of the Commission.

Penalty: \$3,000 or imprisonment for 6 months, or both.

Power to administer oath or affirmation

58. A member of the Commission may administer an oath or affirmation to a person appearing as a witness.

Refusal to be sworn or to answer questions

59. A person appearing as a witness must not, without reasonable excuse:

- (a) refuse or fail to comply with a requirement by a member of the Commission to be sworn or to make an affirmation; or
- (b) refuse or fail to answer a question that he or she is required to answer by a member of the Commission; or
- (c) refuse or fail to produce a document that he or she was required to produce by a summons served on him or her.

Penalty: \$3,000 or imprisonment for 6 months, or both.

Protection of members and witnesses

60. (1) A member of the Commission has, in the exercise of powers and the performance of duties and functions as a member in relation to an inquiry, the same protection and immunity as a Justice of the High Court.

(2) Subject to this Act, a person appearing as a witness has the same protection, and is, in addition to the penalties provided by this Act, subject to the same liabilities, as a witness in proceedings in the High Court.

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Contempt of Commission

61. A person must not:

- (a) insult or disturb a member of the Commission in the exercise of his or her powers or the performance of his or her functions or duties as a member of the Commission; or
- (b) interrupt an inquiry; or
- (c) use insulting language towards a member of the Commission; or
- (d) create a disturbance, or take part in creating or continuing a disturbance, in a place where the Commission is holding an inquiry; or
- (e) do any other act or thing that would, if the Commission were a court of record, constitute a contempt of that court.

Penalty: \$3,000 or imprisonment for 6 months, or both.

Powers of Commission in relation to documents produced

62. (1) A member of the Commission may inspect any books or documents furnished to the Commission for the purposes of the performance of its functions under this Act or produced at an inquiry and may make copies of, or take extracts from, those books or documents.

(2) A book or document so furnished may be retained by the Commission for such reasonable period as is necessary for the purposes of the Commission, but during that period the Commission must permit a person otherwise entitled to possession of the book or document to inspect, make copies of, and take extracts from, the book or document at such places and times as the Commission thinks appropriate.

Allowances to witnesses

63. A person served with a summons under section 56 is entitled to be paid by the Commonwealth such allowances for travelling and other expenses as are prescribed.

Witness not to be prejudiced in employment

64. An employer must not:

- (a) dismiss, or threaten to dismiss, an employee from his or her employment; or
- (b) injure, or threaten to injure, an employee in his or her employment; or
- (c) prejudice, or threaten to prejudice, an employee in his or her employment;

because the employee:

- (d) has appeared, or proposes to appear, as a witness at an inquiry; or

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(e) has given, or proposes to give, any evidence at an inquiry.

Penalty: \$3,000 or imprisonment for 6 months, or both.

Report to be given to Minister in certain circumstances

65. (1) Where, under subsection 53 (4), the Commission has made a request to an employer for particulars of any action proposed to be taken as a result of conclusions or recommendations contained in a report under section 53 or taken or proposed to be taken in respect of a notice issued under section 46 or 47 and:

- (a) the employer fails, without reasonable excuse, to provide the particulars within the period specified in the request; or
- (b) the action taken or proposed to be taken is not, in the Commission's opinion, adequate having regard to the duties imposed by the Act and the regulations; or
- (c) so far as action not yet taken is concerned—the Commission forms the opinion that the action proposed to be taken as a result of the conclusions or recommendations contained in the report, or proposed to be taken in respect of a notice issued under section 46 or 47, has not been taken within a reasonable time;

the Commission may prepare and give to the Minister a report to this effect, being a report that includes:

- (d) a copy of the report under section 53; and
- (e) a copy of any response by the employer to that request; and
- (f) where the Commission has conducted an inquiry under section 55—the findings of that inquiry.

(2) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the report is given to the Minister.

Report to be given to Minister of failures to comply with directions etc.

66. (1) Where the Commission forms the opinion that an employer has failed to comply with:

- (a) a direction given under section 45; or
- (b) a notice issued under section 46 or 47;

the Commission may prepare and give to the Minister a report to this effect.

(2) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the report is given to the Minister.

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Delegation by Commission

67. Where the Commission has, under the *Commonwealth Employees' Rehabilitation and Compensation Act 1988*, delegated its powers under this Division, this Division has effect as if any reference in this Division to the Commission or to a member of the Commission were a reference to the person to whom the power has been delegated.

PART 5—MISCELLANEOUS

Notification and reporting of accidents and dangerous occurrences

68. (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 the death of, or serious personal injury to, any person; or
- (b) an accident that causes an employee who performs work in connection with the undertaking to be incapacitated from performing work for a period prescribed for the purposes of this paragraph; or
- (c) a dangerous occurrence;

the employer must, in accordance with the regulations, give to the Commission such notice of, and such a report concerning, the accident or dangerous occurrence as the regulations require.

(2) Without limiting the provision that may be made by regulations made for the purposes of this section, such regulations (not being regulations made for the purpose of paragraph (1)(b)) 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 and dangerous occurrences to be kept

69. (1) An employer must maintain, in accordance with the regulations, a record of each accident or dangerous occurrence in respect of which the employer is required by section 68 to notify the Commission.

(2) Without limiting the provision that may be made by regulations made for the purposes of this section, such regulations may include provision concerning:

- (a) the nature of the contents of a record maintained under this section; and
- (b) the period for which such a record must be retained.

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Codes of practice

70. (1) For the purpose of providing practical guidance to employers, the Minister may approve codes of practice prepared by the Commission or by any other body, and may amend or revoke any code of practice so approved.

(2) Without limiting the generality of the matters that may be included in codes of practice prepared by the Commission, the Commission must:

- (a)** in respect of each NOHSC standard or code that has been declared under section 38 (1) of the *National Occupational Health and Safety Commission Act 1985* before this section commences—as soon as practicable after this section commences; and
- (b)** in respect of each NOHSC standard or code that is declared under that subsection after this section commences—as soon as practicable after that standard or code is declared;

incorporate that standard or code, to the extent that it is capable of relating to Commonwealth employment, in a code of practice prepared by the Commission for Ministerial approval under this section.

(3) A code of practice incorporating a document (other than a NOHSC standard or code) that is prepared by a body may incorporate that document as in force at the time the code of practice is approved or as amended by the body from time to time.

(4) Where the Minister approves or amends a code of practice (including such a code as previously amended by the Minister), the code as so approved or amended may be expressed by the Minister:

- (a)** to apply generally; or
- (b)** to apply only to occupational health and safety matters in an area that is, or among employees who are, specified by the Minister in the instrument of approval.

(5) Where the Minister approves, amends or revokes a code of practice, the Minister must:

- (a)** cause to be published in the *Gazette* a notice of the approval, amendment or revocation of the code of practice, as the case may be; and
- (b)** cause to be laid before each House of the Parliament, within 15 sitting days of that House after the day on which the notice is published in the *Gazette*, a document setting out the code of practice as approved, including any document incorporated in the code of practice under subsection (3), or the amendment or revocation of the code of practice, as the case may be.

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(6) A document setting out a code of practice or an amendment or revocation of a code of practice is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

(7) The Commission must, at all times, ensure that there is available for inspection at the offices of the Commission an up to date copy of each document that is incorporated in a code of practice under subsection (3).

(8) A person is not liable to any civil or criminal proceedings by reason only that the person has failed to observe a provision of a code of practice approved by the Minister.

(9) In this section, “**NOHSC standard or code**” means a national standard or a code of practice declared under subsection 38 (1) of the *National Occupational Health and Safety Commission Act 1985*.

Use of codes of practice in proceedings

71. Where in any proceedings under this Act it is alleged that a person contravened a provision of this Act or the regulations in relation to which an approved code of practice was in effect at the time of the alleged contravention or failure:

- (a) the approved code of practice is admissible in evidence in those proceedings; and
- (b) if the court is satisfied, in relation to any matter which it is necessary for the prosecution to prove in order to establish the alleged contravention, that:
 - (i) any provision of the approved code of practice is relevant to that matter; and
 - (ii) the person failed at any material time to observe that provision of the approved code of practice;

that matter is to be taken as proved unless the court is satisfied that in respect of that matter the person complied with that provision of this Act or the regulations otherwise than by way of observance of that provision of the approved code of practice.

Interference etc. with equipment etc.

72. A person must not, without reasonable cause, wilfully or recklessly:

- (a) interfere with or render ineffective; or
- (b) require or otherwise cause another person to interfere with or render ineffective;

any protective equipment or safety device provided for the health, safety or welfare of employees or contractors at work which the person knew or ought reasonably to have known was protective equipment or a safety device.

Penalty: \$3,000 or imprisonment for 6 months, or both.

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Employer not to levy employees etc.

73. An employer must not levy, or permit to be levied, 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: in the case of a Government business enterprise—\$25,000.

Certain matters to be included in annual reports

74. (1) The annual report in relation to a financial year:

- (a) of each Department through which the Commonwealth acts; and
- (b) of each Commonwealth authority that is required, under the Act or other law by or in accordance with which the authority is established or incorporated, to prepare an annual report of its activities with a view to that report being laid before each House of the Parliament;

must include details of the following matters:

- (c) the occupational health and safety policy of the Department or authority during the financial year, including details of:
 - (i) any agreement made with employees relating to occupational health and safety; and
 - (ii) the establishment of committees to deal with occupational health and safety matters; and
 - (iii) the selection of health and safety representatives;
- (d) measures taken during the year to ensure the health, safety and welfare at work of employees and contractors of the Department or authority;
- (e) statistics of any accidents or dangerous occurrences during the year that arose out of the conduct of undertakings by the Department or authority and that required the giving of notice under section 68;
- (f) any investigations conducted during the year that relate to undertakings carried on by the employer, including details of all:
 - (i) tests conducted on any plant, substance or thing in the course of such investigations; and
 - (ii) directions given to the employer under section 45 during the year; and
 - (iii) notices given to the employer under sections 30, 46 and 47 during the year;
- (g) such other matters as are prescribed.

(2) Where an annual report of the activities of the Commonwealth authority is not required, under the Act or other law by or in accordance

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with which the authority is established or incorporated, to be prepared with a view to its being laid before each House of the Parliament, a report concerning details, in relation to the authority in relation to a particular financial year, of the matters referred to in subsection (1), must be attached:

- (a) if a controlling interest in the Commonwealth authority is held, either directly or indirectly, by another Commonwealth authority in respect of the activities of which an annual report is so required to be prepared—to that annual report; or
- (b) if a controlling interest in the Commonwealth authority is not so held—to the annual report of the Department or a Department, administered by the responsible Minister for the first-mentioned authority.

Annual report of Commission

75. The annual report of the Commission in respect of a financial year must contain a report on the operation of this Act and the regulations during that year, being a report that includes:

- (a) statistics, with appropriate details, of all accidents and dangerous occurrences notified to the Commission during the year under section 68; and
- (b) details of all prosecutions instituted under this Act and the regulations during the year; and
- (c) statistics, with appropriate details, of all:
 - (i) investigations conducted; and
 - (ii) instances of the taking of possession of plant, substances or things, or of the taking of samples of substances or things under section 44; and
 - (iii) directions given under section 45; and
 - (iv) notices issued under sections 46 and 47; and
 - (v) appeals instituted under section 48 against investigators' decisions; and
 - (vi) requests made under subsection 53 (4);during the year; and
- (d) particulars of any directions given by the Minister to the Commission under subsection 12 (2) during the year; and
- (e) such other matters as are prescribed.

Employer not to dismiss etc. employees on certain grounds

76. (1) An employer must not:

- (a) dismiss an employee; or
- (b) injure an employee in his or her employment; or

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

because the employee:

- (e) has complained or proposes to complain about a matter concerning the health, safety or welfare of employees at work; or
- (f) has assisted or proposes to assist, by the giving of information or otherwise, the conduct of an investigation; or
- (g) has ceased, or proposes to cease, to perform work, in accordance with a direction by a health and safety representative under paragraph 37 (1) (b), not being a cessation or proposed cessation that continues after:
 - (i) the health and safety representative has agreed with a person supervising work the subject of the direction, that the cessation or proposed cessation was not, or is no longer necessary; or
 - (ii) an investigator has, under subsection 37 (4), made a decision that has the effect that the employee should perform the work.

Penalty: in the case of an employer that is a Government business enterprise—\$25,000.

(2) In proceedings for an offence against subsection (1), if all the relevant facts and circumstances, other than the reason for an action alleged in the charge, are proved, it lies upon the defendant to establish that the action was not taken for that reason.

Institution of prosecutions

77. (1) Proceedings for an offence against this Act or the regulations may be instituted by the Commission or by an investigator.

(2) Where proceedings for an offence against this Act or the regulations have not been instituted within 6 months after the occurrence of an act or omission which, in the opinion of a health and safety representative for a designated work group or an involved union in relation to such a designated work group, constitutes an offence against this Act or the regulations, that health and safety representative or that involved union may, in writing, request the Commission to institute such proceedings.

(3) The Commission must, within 3 months after receiving a request under subsection (2), advise the health and safety representative or the involved union, as the case may be, whether proceedings under

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subsection (1) have been or will be instituted or give reasons why such proceedings will not be instituted.

Conduct of directors, servants and agents

78. (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 is to 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 the body corporate 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 person other than a body corporate 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 is to 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 the first-mentioned person establishes that the first-mentioned person 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 enacted;

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 includes a reference to:

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

Act not to give rise to other liabilities etc.

79. Subject to section 80, nothing in this Act:

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

Effect of contravention of Act etc. on contracts of employment etc.

80. (1) Subject to subsection (3), a contravention of this Act or the regulations by an employee is to be taken, for all purposes, including, in the case of a person employed under the *Public Service Act 1922*, the purposes of Division 6 of Part III of that Act, to be a contravention of the terms and conditions upon which the person is employed.

(2) Subject to subsection (3), where a person who occupies an office established by an Act, other than the *Public Service Act 1922*, contravenes this Act or the regulations, that contravention may be taken into account in determining whether that person has been guilty of misbehaviour for the purposes of that first-mentioned Act.

(3) Subsections (1) and (2) do not apply to a contravention of this Act or of the regulations constituted by a refusal or failure to do an act or thing (other than an act or thing that a person is required to take all reasonably practicable steps to do) where, because of an emergency prevailing at the time of the refusal or failure, it was not reasonably practicable to do that act or thing.

(4) Any term of a contract of employment that purports to exclude, restrict or modify, or has the effect of excluding, restricting or modifying, the application of this section in relation to the contract is void.

Circumstances preventing compliance with Act may be defence to prosecution

81. Where this Act or the regulations require any act or thing to be done by a person, otherwise than in terms that require the person to take all reasonably practicable steps to do that act or thing, it is a defence to a prosecution of that person for refusing or failing to do that thing if the person proves that, because of an emergency prevailing at the time of the refusal or failure, it was not reasonably practicable to do that act or thing.

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Regulations

82. (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing all 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;

and, without limiting the generality of the foregoing, may make regulations prescribing:

- (c) procedures for the election of persons, under section 25, as health and safety representatives; and
- (d) procedures for the selection of persons, under section 34, as members of health and safety committees, to represent the interests of employees; and
- (e) procedures to be followed at meetings of health and safety committees; and
- (f) the manner in which notices are to be served under this Act or the regulations; and
- (g) forms for the purposes of this Act or the regulations; and
- (h) prescribing penalties, not exceeding \$1,000, for offences against the regulations.

(2) Where the Governor-General is satisfied that:

- (a) a power or function is conferred on a person under a law of the Commonwealth or a State or Territory; and
- (b) this Act, or a provision of this Act, prevents the proper performance of that function, or the proper exercise of that power;

the Governor-General may make regulations declaring that this Act or that provision does not apply to that person, or does not apply to that person in the circumstances specified in the regulations, and regulations so made have effect accordingly.

(3) Regulations made under subsection (2) cease to have effect 5 years after the day on which the regulations come into operation unless:

- (a) they are sooner repealed; or
- (b) they provide that they are to cease to have effect on a day earlier than the first-mentioned day;

but regulations that are the same in substance as the regulations that have ceased to have effect by virtue of this subsection may be made under subsection (2) at any time after such regulations have so ceased to have effect.

(4) In subsection (2), “**this Act**” includes the regulations.

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SCHEDULE

Section 5

GOVERNMENT BUSINESS ENTERPRISES

ANL Limited
Australian Industry Development Corporation
Australian National Railways Commission
Australian Postal Corporation
Australian Telecommunications Corporation
Commonwealth Banking Corporation
Commonwealth Serum Laboratories Commission
Health Insurance Commission
Housing Loans Insurance Corporation
OTC Limited
Pipeline Authority
SMEC Limited
Snowy Mountains Hydro-electric Authority

*[Minister's second reading speech made in—
House of Representatives on 18 October 1990
Senate on 10 December 1990]*