

TASMANIA

**PETROLEUM (SUBMERGED LANDS)
AMENDMENT BILL 2004**

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PETROLEUM (SUBMERGED LANDS) AMENDMENT BILL 2004

*(Brought in by the Minister for Infrastructure, Energy and
Resources, the Honourable Bryan Alexander Green)*

A BILL FOR

An Act to amend the *Petroleum (Submerged Lands) Act 1982*

Be it enacted by His Excellency the Governor of Tasmania,
by and with the advice and consent of the Legislative
Council and House of Assembly, in Parliament assembled,
as follows:

Short title

1. This Act may be cited as the *Petroleum (Submerged
Lands) Amendment Act 2004*.

Commencement

2. This Act commences on a day to be proclaimed.

Principal Act

3. In this Act, the *Petroleum (Submerged Lands) Act
1982** is referred to as the Principal Act.

*No. 11 of 1982

Section 3 amended (Interpretation)**4.** Section 3(1) of the Principal Act is amended as follows:

- (a) by omitting the definition of “the Commonwealth Act” and substituting the following definitions:

“the Commonwealth Act” means the *Petroleum (Submerged Lands) Act 1967* of the Commonwealth;

“the Commonwealth Minister” means the Minister of the Crown in right of the Commonwealth for the time being administering the Commonwealth Act;

- (b) by inserting the following definition after the definition of “inspector”:

“interstate Minister” means the Minister of the Crown in right of a State (other than Tasmania) or of the Northern Territory who is for the time being authorised under the law of that State or Territory to perform the functions of a Designated Authority under the *Petroleum (Submerged Lands) Act 1967* of the Commonwealth;

- (c) by inserting the following definition after the definition of “licensee”:

“listed OHS laws” has the meaning given in section 150C;

- (d) by inserting the following definition after the definition of “natural resources”:

“OHS inspector” means an OHS inspector appointed under the Commonwealth Act;

- (e) by inserting the following definition after the definition of “royalty period”:

“Safety Authority” means the National Offshore Petroleum Safety Authority established by the Commonwealth Act;

Section 8 substituted

5. Section 8 of the Principal Act is repealed and the following section is substituted:

Interpretation

8. In this Division, unless the contrary intention appears –

“Commonwealth Act” means, as the context requires –

- (a) the *Petroleum (Submerged Lands) Act 1967* of the Commonwealth; or
- (b) the *Petroleum (Submerged Lands) (Registration Fees) Act 1967* of the Commonwealth; or
- (c) the *Petroleum (Submerged Lands) Fees Act 1994* of the Commonwealth;

“Commonwealth adjacent area” means –

- (a) if the *Petroleum (Submerged Lands) Act 1967* of the Commonwealth is in force, the adjacent area in respect of Tasmania determined in accordance with section 5A of that Act; or
- (b) if the *Petroleum (Submerged Lands) Act 1967* of the Commonwealth has been repealed and been re-enacted (with or without modifications), the area that, under the re-enacted Act of the Commonwealth, corresponds to the adjacent area in respect of Tasmania determined in accordance with section 5A of the repealed Act.

Section 14A inserted

6. After section 14 of the Principal Act, the following section is inserted in Part II:

Disapplication of State occupational health and safety laws

14A. (1) The prescribed occupational health and safety laws do not apply in relation to –

- (a) a facility; or
- (b) a person at a facility; or
- (c) a person near a facility, to the extent to which the person is affected by –
 - (i) a facility; or

(ii) activities that take place at a facility; or

(d) activities that take place at a facility.

(2) A reference in subsection (1) to the prescribed occupational health and safety laws is a reference to such of the provisions of those laws that, but for subsection (1), would apply in the adjacent area by virtue of the *Coastal and Other Waters (Application of State Laws) Act 1982*.

(3) In this section –

“**facility**” has the same meaning as in Schedule 5;

“**prescribed occupational health and safety laws**” mean any laws of the State relating to occupational health and safety (whether or not they also relate to other matters) that are prescribed by the regulations for the purposes of this section.

(4) This section applies despite anything to the contrary in the *Coastal and Other Waters (Application of State Laws) Act 1982*.

Section 58 amended ("Unit development")

7. Section 58 of the Principal Act is amended as follows:

- (a) by omitting from subsection (11)(b) “within the meaning of the Commonwealth Act”;
- (b) by inserting the following subsection after subsection (12):

(13) For the purposes of subsection (11)(b), the adjacent area in respect of a State is –

- (a) if the *Petroleum (Submerged Lands) Act 1967* of the Commonwealth is in force, the adjacent area in respect of a State within the meaning of that Act; or
- (b) if the *Petroleum (Submerged Lands) Act 1967* of the Commonwealth has been repealed and been re-enacted (with or without modifications), the area that, under the re-enacted Act of the Commonwealth, corresponds to the adjacent area in respect of a State within the meaning of the repealed Act.

Section 63 amended (Application for pipeline licence)

8. Section 63(2)(b) of the Principal Act is amended by inserting “of a production licence” after “area”.

Section 64 amended (Grant or refusal of pipeline licence)

9. Section 64(5) of the Principal Act is amended by inserting “of a production licence” after “be, a licence area”.

Section 124A inserted

10. After section 124 of the Principal Act, the following section is inserted in Division 6:

**Interfering with offshore petroleum
installation or operations**

124A. (1) A person must not intentionally or recklessly –

- (a) cause damage to, or interfere with, any structure or vessel in the adjacent area that is, or is to be, used in exploring for, recovering, processing, storing, preparing for transport, or transporting, petroleum; or
- (b) interfere with any operations or activities being carried out, or any works being executed, on, or by means of, or in connection with, such a structure or vessel.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 3 300 penalty units; or
- (b) a natural person, a fine not exceeding 660 penalty units or imprisonment for a term not exceeding 10 years, or both.

(2) In this section –

“structure” means any fixed, moveable or floating structure or installation and includes a pipeline, pumping station, tank station or valve station.

Part IIIA inserted

11. After section 150 of the Principal Act, the following Part is inserted:

**PART IIIA – OCCUPATIONAL HEALTH AND
SAFETY**

Division 1 – Preliminary

Interpretation

150A. In this Part –

“**Board**” means the National Offshore Petroleum Safety Authority Board established by the Commonwealth Act;

“**CEO**” means the Chief Executive Officer of the Safety Authority;

“**facility**” has the same meaning as in Schedule 5;

“**offshore petroleum operations**” means any operations (including diving operations) that –

(a) relate to –

(i) the exploration for petroleum; or

(ii) the recovery, processing, storage, offloading or piped conveyance of petroleum; and

(b) if the operations are diving operations, take place in the adjacent area; and

- (c) if the operations are not diving operations, take place at a facility.

Occupational health and safety

150B. Schedule 5 has effect.

Listed OHS laws

150C. The following provisions are the “**listed OHS laws**” for the purposes of this Act:

- (a) section 124A, to the extent to which that section relates to –
 - (i) damage to, or interference with, a facility; or
 - (ii) interference with any operations or activities being carried out, or any works being executed, on, or by means of, or in connection with, a facility;
- (b) Schedule 5;
- (c) regulations made for the purposes of Schedule 5;
- (d) regulations made for the purposes of section 150D;
- (e) any other regulations relating to occupational health and safety matters that are prescribed for the purposes of this paragraph.

Regulations relating to occupational health and safety

150D. (1) The regulations may make provision in relation to the occupational health and safety of persons at or near a facility who are under the control of a person who is carrying on an operation.

(2) Without limiting subsection (1), regulations for the purpose of that subsection may –

- (a) require a person who is carrying on an operation to establish and maintain a system of management to secure the occupational health and safety of persons referred to in that subsection; and
- (b) specify requirements with which the system must comply.

Division 2 – Functions and powers of Safety Authority**Safety Authority's functions**

150E. The Safety Authority has the following functions:

- (a) the functions conferred on it by or under this Act in relation to offshore petroleum operations;
- (b) to promote the occupational health and safety of persons engaged in offshore petroleum operations;
- (c) to develop and implement effective monitoring and enforcement strategies to secure compliance by persons with

their occupational health and safety obligations under this Act;

(d) to –

(i) investigate accidents, occurrences and circumstances that affect, or have the potential to affect, the occupational health and safety of persons engaged in offshore petroleum operations; and

(ii) to report, as appropriate, to the Minister and the Commonwealth Minister on those investigations;

(e) to advise persons, either on its own initiative or on request, on occupational health and safety matters relating to offshore petroleum operations;

(f) to make reports, including recommendations, to –

(i) the Minister; and

(ii) the Commonwealth Minister –

on issues relating to the occupational health and safety of persons engaged in offshore petroleum operations;

(g) to cooperate with –

(i) the Minister and State agencies having functions relating to offshore petroleum operations; and

(ii) other Commonwealth agencies having functions relating to offshore petroleum operations.

Safety Authority's ordinary powers

150F. (1) The Safety Authority has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

(2) The Safety Authority's powers include, but are not limited to, the following powers:

- (a) the power to acquire, hold and dispose of real and personal property;
- (b) the power to enter into contracts;
- (c) the power to lease the whole or any part of any land or building for the purposes of the Safety Authority;
- (d) the power to occupy, use and control any land or building owned or held under lease by the Commonwealth and made available for the purposes of the Safety Authority;
- (e) the power to conduct research and development projects and to cooperate with others in such projects;
- (f) the power to apply for and hold patents and exploit patents;
- (g) the power to do anything incidental to any of its functions.

Judicial notice of seal

150G. All courts, judges and persons acting judicially must –

- (a) take judicial notice of the imprint of the seal of the Safety Authority appearing on a document; and
- (b) presume that the document was duly sealed.

Division 3 – Safety Authority Board

Functions of Board

150H. (1) The Board has the following functions:

- (a) to give advice, and make recommendations, to the CEO about the operational policies and strategies to be followed by the Safety Authority in the performance of its functions;
- (b) to give advice, and make recommendations, to –
 - (i) the Minister; and
 - (ii) the Commonwealth Minister; and
 - (iii) interstate Ministers; and
 - (iv) the body known as the Ministerial Council on Mineral and Petroleum Resources –about either or both of the following:
 - (v) policy or strategic matters relating to the occupational health and safety of persons engaged in offshore petroleum operations;

- (vi) the performance by the Safety Authority of its functions;
- (c) any other functions specified in a written notice given by the Commonwealth Minister to the Chair of the Board.

(2) As soon as practicable after the Board gives advice, or makes recommendations, under subsection (1)(b) to –

- (a) the Minister; or
- (b) an interstate Minister; or
- (c) the body known as the Ministerial Council on Mineral and Petroleum Resources –

the Board must give the Commonwealth Minister a written copy of that advice or those recommendations.

Powers of Board

150I. The Board has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

Validity of decisions

150J. The performance of the functions, or the exercise of the powers, of the Board is not affected only because of there being a vacancy or vacancies in the membership of the Board.

***Division 4 – Chief Executive Officer and staff of
Safety Authority*****CEO acts for Safety Authority**

150K. Anything done by the CEO in the name of the Safety Authority or on the Safety Authority's behalf is taken to have been done by the Safety Authority.

Working with Board

150L. (1) The CEO must request the Board's advice on strategic matters relating to the performance of the Safety Authority's functions.

(2) The CEO must have regard to the advice given to him or her by the Board (whether or not the advice was given in response to a request).

(3) The CEO must –

- (a) keep the Board informed of the Safety Authority's operations; and
- (b) give the Board any reports, documents and information in relation to those operations that the Chair of the Board requires.

Delegation

150M. (1) A State Service officer or a State Service employee, or a person employed by a State authority, within the meaning of the *State Service Act 2000*, may perform any function and exercise

any power delegated to him or her by the CEO under the Commonwealth Act.

(2) In performing a function or exercising a power under the delegation, the delegate must comply with any directions of the CEO.

Assistance to Safety Authority

150N. A State Service officer or a State Service employee, or a person employed by a State authority, within the meaning of the *State Service Act 2000*, may assist the Safety Authority in connection with the performance of any of its functions or the exercise of any of its powers under this Act, the Commonwealth Act or a corresponding law.

Division 5 – Other Safety Authority provisions

Minister may require Safety Authority to prepare reports or give information

150O. (1) The Minister may, by written notice given to the Safety Authority, require the Safety Authority –

- (a) to prepare a report about one or more specified matters relating to the performance of the Safety Authority's functions or the exercise of the Safety Authority's powers; and
- (b) give a copy of the report to –
 - (i) the Minister; and
 - (ii) each interstate Minister; and

(iii) the Commonwealth Minister –

within the period specified in the notice.

(2) The Minister may, by written notice given to the Safety Authority, require the Safety Authority to –

(a) prepare a document setting out specified information relating to the performance of the Safety Authority's functions or the exercise of the Safety Authority's powers; and

(b) give a copy of the report to –

(i) the Minister; and

(ii) each interstate Minister; and

(iii) the Commonwealth Minister –

within the period specified in the notice.

(3) The Safety Authority must comply with a requirement under subsection (1) or (2).

Directions to Safety Authority

150P. (1) The Minister may request the Commonwealth Minister to give a direction to the Safety Authority that relates wholly or principally to the Safety Authority's operations in the adjacent area.

(2) The Commonwealth Minister must use his or her best endeavours to make a decision on the request within 30 days after receiving the request.

(3) If the Commonwealth Minister refuses the request, the Commonwealth Minister must give the Minister a written statement setting out the reasons for the refusal.

(4) The Safety Authority must comply with any direction given by the Commonwealth Minister under this section.

Reviews of operations of Safety Authority

150Q. (1) The Minister must cause reviews to be conducted of the operations of the Safety Authority in relation to the adjacent area.

(2) The Minister must cause to be prepared a report of a review under subsection (1).

(3) The first review is to relate to the 3-year period beginning on 1 January 2005, and is to be completed within 6 months, or the longer period that the Minister allows, after the end of that 3-year period.

(4) Subsequent reviews are to relate to successive 3-year periods, and must be completed within 6 months, or the longer period that the Minister allows, after the end of the 3-year period to which the review relates.

(5) A review under this section may be conducted in conjunction with a review under the Commonwealth Act or a corresponding law (or both).

(6) Without limiting the matters to be covered by a review under subsection (1), the review must include an assessment of the effectiveness of the Safety Authority in bringing about improvements in

the occupational health and safety of persons engaged in offshore petroleum operations.

(7) The Minister must cause a copy of the report of a review under subsection (1) to be tabled in each House of Parliament within 15 sitting-days of that House after the report of the review is completed.

(8) For the purposes of this section, a review is completed when the report of the review is made available to the Minister.

Liability for acts and omissions

150R. **(1)** This section applies to the following persons:

- (a) the Safety Authority;
- (b) the CEO;
- (c) an OHS inspector;
- (d) a person acting under the direction or authority of the Safety Authority or the CEO.

(2) A person to whom this section applies is not personally liable for anything done or omitted to be done in good faith –

- (a) in the performance of a function under a listed OHS law; or
- (b) in the reasonable belief that the act or omission was in the performance of a function under a listed OHS law.

Section 151 amended (Regulations)

12. Section 151 of the Principal Act is amended by inserting after subsection (3) the following subsection:

(3A) The regulations may differ according to differences in time, place or circumstances.

Section 152 amended (Transitional provisions)

13. Section 152 of the Principal Act is amended by inserting after subsection (3) the following subsection:

(3A) The regulations may make provision for any transitional matters arising out of the amendments made to this Act by the *Petroleum (Submerged Lands) Amendment Act 2004*.

Schedule 3 amended (Scheme For Transitional Arrangements)

14. Schedule 3 to the Principal Act is amended as follows:

- (a) by inserting the following definition before the definition of “altered arrangements” in clause 1(1):

**“adjacent area under the
Commonwealth Act” means –**

- (a) if the *Petroleum (Submerged Lands) Act 1967* of the Commonwealth is in force, an adjacent area in respect of a State determined in accordance with section 5A of that Act; or

- (b) if the *Petroleum (Submerged Lands) Act 1967* of the Commonwealth has been repealed and been re-enacted (with or without modifications), an area that, under the re-enacted Act of the Commonwealth, corresponds to an adjacent area in respect of a State determined in accordance with section 5A of the repealed Act.
- (b) by omitting the definition of “Commonwealth Act” from clause 1(1);
- (c) by inserting in clause 3(4) “as in force before 7 March 2000” after “(6) of section 31 of the Commonwealth Act”.

Schedule 5 inserted

15. After Schedule 4 to the Principal Act, the following Schedule is inserted:

**SCHEDULE 5 – OCCUPATIONAL HEALTH
AND SAFETY**

Section 150B

PART 1 – PRELIMINARY

Objects

1. The objects of this Schedule are, in relation to facilities located in the adjacent area –

- (a) to secure the occupational health and safety and welfare of persons at or near those facilities; and
- (b) to protect persons at or near those facilities from risks to occupational health and safety arising out of activities being conducted at those facilities; and
- (c) to ensure that expert advice is available on occupational health and safety matters in relation to those facilities; and
- (d) to promote an occupational environment for members of the workforce at those facilities that is adapted to their needs relating to health and safety; and
- (e) to foster a consultative relationship between all relevant persons concerning the health, safety and welfare of members of the workforce at those facilities.

Definitions

2. In this Schedule –

“accident” includes the contraction of a disease;

“associated offshore place”, in relation to a facility, means any offshore place near the facility where activities (including diving activities) relating to the construction, installation, operation,

maintenance or decommissioning of the facility take place, but does not include –

- (a) another facility; or
- (b) a supply vessel, offtake tanker, anchor handler or tugboat; or
- (c) a vessel, or structure, that is declared by the regulations not to be an associated offshore place;

“contract” includes an arrangement or understanding;

“contractor” has the meaning given by clause 6;

“dangerous occurrence” means an occurrence declared by the regulations to be a dangerous occurrence for the purposes of this definition;

“designated work group” means –

- (a) a group of members of the workforce at a facility that is established as a designated work group under clause 16 or 17; or
- (b) that group as varied in accordance with clause 18 or 19;

“employee”, in relation to an employer, means an employee of that employer;

“employer” means an employer who carries on an activity at a facility;

“facility” means a facility within the meaning of clause 3, and –

- (a) includes a facility (within the meaning of clause 3) that is being constructed or installed; and
- (b) except in the definition of **“associated offshore place”**, includes an associated offshore place in relation to a facility (within the meaning of clause 3);

“group member”, in relation to a designated work group at a facility, means a person who is –

- (a) a member of the workforce at that facility; and
- (b) included in that designated work group;

“improvement notice” means an improvement notice issued under clause 58(1);

“inspection” means an inspection conducted under Part 4 of this Schedule and includes an investigation or inquiry;

“master”, in relation to a vessel, means the person having command or charge of the vessel;

“member of the workforce”, in relation to a facility, means a natural person who does work at the facility, whether –

- (a) as an employee of the operator of the facility or of another person; or

- (b) as a contractor of the operator or of another person;

“offshore petroleum operations” has the same meaning as in Part IIIA;

“operator”, in relation to a facility or proposed facility, means the person who, under the regulations, is taken to be the operator of that facility or proposed facility;

“operator’s representative at a facility” means a person present at the facility in compliance with the obligations imposed on the operator by clause 4;

“own” includes own jointly and own in part;

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

“premises” includes the following:

- (a) a structure or building;
- (b) a place (whether or not enclosed or built on);
- (c) a part of a thing referred to in paragraph (a) or (b);

“prohibition notice” means a prohibition notice issued under clause 56(1);

“proposed facility” means a facility proposed to be constructed, installed or operated;

“recovery”, in relation to petroleum, includes all processes directly or indirectly associated with its recovery;

“registered organisation” means an organisation within the meaning of the *Workplace Relations Act 1996* of the Commonwealth;

“regulated business premises” means –

- (a) a facility; or
- (b) premises that are –
 - (i) occupied by a person who is the operator of a facility; and
 - (ii) used, or proposed to be used, wholly or principally in connection with offshore petroleum operations;

“regulations” means regulations made for the purposes of this Schedule;

“reviewing authority” means the Australian Industrial Relations Commission;

“work” means work offshore that is directly or indirectly related to the construction, installation, operation, maintenance or decommissioning of a facility;

“work group employer”, in relation to a designated work group at a facility, means an employer of one or more group members, but does not include the operator of the facility;

“workplace”, in relation to a facility, means the whole facility or any part of the facility;

“workplace representative” means –

- (a) in relation to a person who is a member of the workforce at a facility, a registered organisation of which that person is a member, if the person is qualified to be a member of that organisation because of the work the person performs at the facility; or
- (b) in relation to a designated work group or a proposed designated work group, a registered organisation of which a person who is, or who is likely to be, in the work group is a member, if the person is qualified to be a member of that organisation because of the work the person performs, or will perform, at a facility as a member of the group.

Facilities

3. (1) A vessel or structure is taken to be a facility for the purposes of this Schedule while that vessel or structure –

- (a) is located at a site in the adjacent area; and
- (b) is being used, or prepared for use, at that site –

- (i) for the recovery of petroleum, for the processing of petroleum, for the storage and offloading of petroleum, or for any combination of those activities; or
- (ii) for the provision of accommodation for persons working on another facility, whether connected by a walkway to that other facility or not; or
- (iii) for drilling or servicing a well for petroleum or doing work associated with the drilling or servicing process; or
- (iv) for laying pipes for petroleum, including any manufacturing of such pipes, or for doing work on an existing pipe; or
- (v) for the erection, dismantling or decommissioning of a vessel or structure referred to in a previous subparagraph of this paragraph; or
- (vi) for any other purpose related to offshore petroleum operations that is prescribed for the purposes of this subparagraph.

(2) Subclause (1) applies to a vessel or structure –

- (a) whether it is floating or fixed; and
- (b) whether or not it is capable of independent navigation.

(3) Subclause (1) has effect subject to subclause (6) or (7).

(4) A vessel or structure used for a purpose referred to in subclause (1)(b)(i) includes –

- (a) any wells and associated plant and equipment by means of which petroleum processed or stored at the vessel or structure is recovered; and
- (b) any pipe or system of pipes through which petroleum is conveyed from a well to the vessel or structure; and
- (c) any secondary line associated with the vessel or structure.

(5) For the purposes of subclause (1), a vessel or structure that is located offshore for the purpose of laying pipes as described in subclause (1)(b)(iv) is taken to be located at a site, despite the fact that the vessel or structure moves as the pipe-laying process proceeds.

(6) Despite subclause (1), a vessel or structure is taken not to be a facility for the purposes of this Schedule if the vessel or structure is –

- (a) an offtake tanker; or
- (b) a tug or an anchor handler; or
- (c) a vessel or structure used for supplying a facility or otherwise travelling between a facility and the shore; or
- (d) a vessel or structure used for any purpose such that it is declared by the regulations not to be a facility.

(7) In determining when a vessel or structure that has the potential to be used for one or more of the purposes referred to in subclause (1)(b) is in fact being so used, the vessel or structure is taken –

- (a) to commence to be so used only at the time when it arrives at the site where it is to be so used and any activities necessary to make it operational at that site are begun; and
- (b) to cease to be so used when operations cease, and the vessel or structure has been returned either to a navigable form or to a form in which it can be towed to another place.

(8) Each of the following is taken to be a facility for the purposes of this Schedule:

- (a) a pipeline subject to a pipeline licence;
- (b) if a pipeline subject to a pipeline licence conveys petroleum recovered from a well without the petroleum having passed through another facility, that pipeline, together with –
 - (i) that well and associated plant and equipment; and
 - (ii) any pipe or system of pipes through which petroleum is conveyed from that well to that pipeline.

(9) In subclause (8)(b) –

“**facility**” does not include a pipeline.

Operator must ensure presence of operator's representative

4. (1) The operator of a facility must ensure that, at all times when one or more natural persons are present at a facility, there is also present a natural person (the “**operator's representative at the facility**”) who has day-to-day management and control of operations at the facility.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 275 penalty units; or
- (b) an individual, a fine not exceeding 55 penalty units.

(2) The operator of a facility must ensure that the name of the operator's representative at the facility is displayed in a prominent place at the facility.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 275 penalty units; or
- (b) an individual, a fine not exceeding 55 penalty units.

(3) Subclause (1) does not imply that, if the operator is a natural person, the operator's representative at the facility may not be, from time to time, the operator.

Health and safety of persons using an accommodation facility

5. For the avoidance of doubt, a reference in this Schedule to the occupational health and safety of a person includes a reference to the health and safety of a person using an accommodation facility provided for the accommodation of persons working on another facility.

Contractor

6. For the purposes of this Schedule, a natural person is taken to be a “**contractor**” of another person (the “**relevant person**”) if the natural person does work at a facility under a contract for services between –

- (a) the relevant person; and
- (b) either –
 - (i) the natural person; or
 - (ii) the employer of the natural person.

PART 2 – OCCUPATIONAL HEALTH AND SAFETY***Division 1 – Duties relating to occupational health and safety*****Duties of operator**

7. (1) The operator of a facility must take all reasonably practicable steps to ensure that –

- (a) the facility is safe and without risk to the health of any person at or near the facility; and
- (b) all work and other activities carried out on the facility are carried out in a manner that is safe and without risk to the health of any person at or near the facility.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 5 500 penalty units; or
- (b) an individual, a fine not exceeding 1 100 penalty units.

(2) Without limiting the generality of subclause (1), the operator of a facility must –

- (a) provide and maintain a physical environment at the facility that is safe and without risk to health; and
- (b) provide and maintain adequate facilities for the welfare of all members of the workforce at the facility; and
- (c) ensure that any plant, equipment, materials and substances at the facility are safe and without risk to health; and
- (d) implement and maintain systems of work at the facility that are safe and without risk to health; and
- (e) implement and maintain appropriate procedures and equipment for the

control of, and response to, emergencies at the facility; and

- (f) provide all members of the workforce, in appropriate languages, with the information, instruction, training and supervision necessary for them to carry out their activities in a manner that does not adversely affect the occupational health and safety of persons at the facility; and
- (g) monitor the occupational health and safety of all members of the workforce and keep records of that monitoring; and
- (h) provide appropriate medical and first aid services at the facility; and
- (i) develop, in consultation with members of the workforce and workforce representatives, a policy relating to occupational health and safety that –
 - (i) will enable the operator and the members of the workforce to cooperate effectively in promoting and developing measures to ensure the occupational health and safety of persons at the facility; and
 - (ii) will provide adequate mechanisms for reviewing the effectiveness of the measures; and
 - (iii) provides for the making of an agreement that complies with subclauses (4) and (5).

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 5 500 penalty units; or
- (b) an individual, a fine not exceeding 1 100 penalty units.

(3) Subclause (2)(i) does not require the operator of a facility to engage in consultations with a workforce representative unless a member of the workforce at the facility has requested the workforce representative to be involved in those consultations.

(4) The agreement referred to in subclause (2)(i)(iii) must be between –

- (a) on the one hand, the operator; and
- (b) on the other hand –
 - (i) the members of the workforce; and
 - (ii) if a member of the workforce at the facility has requested a workforce representative in relation to the member to be a party to that agreement, that workforce representative.

(5) The agreement referred to in subclause (2)(i)(iii) must provide appropriate mechanisms for continuing consultation between –

- (a) on the one hand, the operator; and
- (b) on the other hand –
 - (i) the members of the workforce; and

- (ii) if a member of the workforce at the facility has requested a workforce representative in relation to the member to be involved in consultations on a particular occasion, that workforce representative.

(6) The agreement may provide for any other matters agreed between the parties to it.

Duties of persons in control of parts of facility or particular work

8. (1) A person who is in control of any part of a facility, or of any particular work carried out at a facility, must take all reasonably practicable steps to ensure that –

- (a) that part of the facility, or the place where that work is carried out, is safe and without risk to health; and
- (b) if the person is in control of particular work, the work is carried out in a manner that is safe and without risk to health.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 5 500 penalty units; or
- (b) an individual, a fine not exceeding 1 100 penalty units.

(2) Without limiting the generality of subclause (1), a person who is in control of any part

of a facility, or of any particular work carried out at a facility, must –

- (a) ensure that the physical environment at that part of the facility, or at the place where the work is carried out, is safe and without risk to health; and
- (b) ensure that any plant, equipment, materials and substances at or near that part of the facility or that place, or used in that work, are safe and without risk to health; and
- (c) implement and maintain systems of work at that part of the facility, or in carrying out work at that place, that are safe and without risk to health; and
- (d) ensure a means of access to, and egress from, that part of the facility or that place that is safe and without risk to health; and
- (e) provide all members of the workforce located at that part of the facility or engaged on that work, in appropriate languages, with the information, instruction, training and supervision necessary for them to carry out their work in a manner that is safe and without risk to health.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 5 500 penalty units; or
- (b) an individual, a fine not exceeding 1 100 penalty units.

Duties of employers

9. (1) An employer must take all reasonably practicable steps to protect the health and safety of employees at a facility.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 5 500 penalty units; or
- (b) an individual, a fine not exceeding 1 100 penalty units.

(2) Without limiting the generality of subclause (1), an employer must –

- (a) provide and maintain a working environment that is safe for employees and without risk to their health; and
- (b) ensure that any plant, equipment, materials and substances used in connection with the employees' work are safe and without risk to health; and
- (c) implement and maintain systems of work that are safe and without risk to health; and
- (d) provide a means of access to, and egress from, the employees' work location that is safe and without risk to health; and
- (e) provide the employees, in appropriate languages, with the information, instruction, training and supervision necessary for them to carry out their work in a manner that is safe and without risk to health.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 5 500 penalty units; or
- (b) an individual, a fine not exceeding 1 100 penalty units.

(3) A person has, in respect of a contractor of that person, the same obligations that an employer has under subclauses (1) and (2) in respect of an employee of that employer, but only in relation to –

- (a) matters over which the first-mentioned person has control; or
- (b) matters over which –
 - (i) the first-mentioned person would have had control apart from express provision to the contrary in a contract; and
 - (ii) the first-mentioned person would, in the circumstances, usually be expected to have had control.

(4) An employer must take all reasonable steps to –

- (a) monitor the health and safety of employees; and
- (b) keep records of that monitoring.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 5 500 penalty units; or

- (b) an individual, a fine not exceeding 1 100 penalty units.

Duties of manufacturers in relation to plant and substances

10. (1) A manufacturer of any plant that the manufacturer ought reasonably to expect will be used by members of the workforce at a facility must take all reasonably practicable steps –

- (a) to ensure that the plant is so designed and constructed as to be, when properly used, safe and without risk to 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 health and safety that may arise from the use of the plant; and
- (c) to make available, in connection with the use of the plant at a facility, adequate written information about –
 - (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 and without risk to health.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 1 100 penalty units; or
- (b) an individual, a fine not exceeding 220 penalty units.

(2) A manufacturer of any substance that the manufacturer ought reasonably to expect will be used by members of the workforce at a facility must take all reasonably practicable steps –

- (a) to ensure that the substance is so manufactured as to be, when properly used, safe and without risk to health; and
- (b) to carry out, or cause to be carried out, the research, testing and examination necessary to discover, and to eliminate or minimise, any risk to health and safety that may arise from the use of the substance; and
- (c) to make available, in connection with the use of the substance at a facility, adequate written 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 and without risk to health; and

- (iv) the first aid and medical procedures that should be followed if the substance causes injury.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 1 100 penalty units; or
- (b) an individual, a fine not exceeding 220 penalty units.

(3) If –

- (a) plant or a substance is imported into Australia by a person who is not its manufacturer; 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 is taken, for the purposes of this clause, to be the manufacturer of the plant or substance.

(4) This clause does not affect the operation of any other law of this State 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 of facilities, plant and substances

11. (1) A supplier of a facility, or of any plant or substance that the supplier ought reasonably to expect will be used by members of the workforce at a facility, must take all reasonably practicable steps –

- (a) to ensure that, at the time of supply, the facility, or the plant or substance, is in such condition as to be, when properly used, safe and without risk to health; and
- (b) to carry out, or cause to be carried out, the research, testing and examination necessary to discover, and to eliminate or minimise, any risk to health or safety that may arise from the condition of the facility, plant or substance; and
- (c) to make available –
 - (i) in the case of a facility, to the operator of a facility; and
 - (ii) in the case of plant or substance, to the person to whom the plant or substance is supplied –

adequate written information, in connection with the use of the facility, plant or substance (as the case requires) about –
 - (iii) the condition of the facility, plant or substance at the time of supply; and

- (iv) any risk to the health and safety of members of the workforce at the facility to which the condition of the facility, plant or substance may give rise unless it is properly used; and
- (v) the steps that need to be taken in order to eliminate that risk; and
- (vi) in the case of a substance, the first aid and medical procedures that should be followed if the condition of the substance causes injury to a member of the workforce at the facility.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 1 100 penalty units; or
- (b) an individual, a fine not exceeding 220 penalty units.

(2) For the purposes of subclause (1), if a person (the “**ostensible supplier**”) supplies to a person either a facility, or any plant or substance that is to be used by members of the workforce at a facility, 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 facility, or in the plant or substance, from another person (the “**actual supplier**”), solely for the purpose of financing its

acquisition by, or its provision to, the person to whom it is finally supplied; and

- (c) has not taken possession of the facility, plant or substance, or has taken possession of the facility, plant or substance solely for the purpose of passing possession of the facility, plant or substance to the person to whom it is finally supplied –

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

(3) This clause does not affect the operation of any other law of this State 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 persons erecting facilities or installing plant

12. (1) A person who erects or installs a facility, or erects or installs any plant at a facility, must take all reasonably practicable steps to ensure that the facility or plant is not erected or installed in such a way that it is unsafe or constitutes a risk to health.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 1 100 penalty units; or

- (b) an individual, a fine not exceeding 220 penalty units.

(2) This clause does not affect the operation of any other law of this State that imposes an obligation in respect of the erection or installation of structures or goods or the supply of services.

Duties of persons in relation to occupational health and safety

13. (1) A person at a facility must, at all times, take all reasonably practicable steps –

- (a) to ensure that the person does not take any action, or make any omission, that creates a risk, or increases an existing risk, to the occupational health and safety of that person or of any other person at or near the facility; and
- (b) in respect of any obligation imposed on the operator or on any other person by or under a listed OHS law, to cooperate with the operator or that other person to the extent necessary to enable the operator or that other person to fulfil that obligation; and
- (c) to use equipment that is –
 - (i) supplied to the person by the operator, an employer of the person or any other person having control of work at a facility (the “**equipment supplier**”); and

- (ii) necessary to protect the occupational health and safety of the person, or of any other person at or near the facility –

in accordance with any instructions given by the equipment supplier, consistent with the safe and proper use of the equipment.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 275 penalty units; or
- (b) an individual, a fine not exceeding 55 penalty units.

(2) Despite subclause (1), the choice or manner of use, or choice and manner of use, of equipment of the kind referred to in subclause (1)(c)(ii) is a matter that may be, consistently with each listed OHS law –

- (a) agreed on between the equipment supplier and any relevant health and safety representative; or
- (b) agreed on by a health and safety committee.

(3) If an agreement of the kind referred to in subclause (2)(a) or (b) provides a process for choosing equipment of a particular kind that is to be provided by the equipment supplier, action must not be taken against a person for failure to use equipment of that kind that is so provided unless the equipment has been chosen in accordance with that process.

(4) If an agreement of the kind referred to in subclause (2)(a) or (b) provides a process for determining the manner of use of equipment of a particular kind, action must not be taken against a person for failure to use, in the manner required by the equipment supplier, 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

14. (1) For the purpose of the application of clause 7, 8 or 9 to the use of plant or a substance, a person on whom an obligation is imposed under any of those clauses is regarded as having taken reasonably practicable steps as required by the relevant clause, in relation to the use of the plant or substance, to the extent that –

- (a) the person ensured, so far as practicable, that its use was in accordance with the information supplied by the manufacturer or the supplier of the plant or substance relating to occupational health and safety in its use; and
- (b) it was reasonable for the person to rely on that information.

(2) For the purpose of the application of clause 10 or 11 to carrying out research, testing and examining a facility, or any plant or substance, a person on whom an obligation is imposed under either of those clauses is regarded as having taken reasonably practicable steps as required by the relevant clause, in relation to carrying out research,

testing and examining the facility, plant or substance, to the extent that –

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

(3) For the purpose of the application of clause 12 to the erection of a facility or the erection or installation of plant at a facility, a person on whom an obligation is imposed under that clause is regarded as having taken reasonably practicable steps as required by that clause to the extent that –

- (a) the person ensured, so far as is reasonably practicable, that the erection of the facility, or the erection or installation of the plant, was –
 - (i) in accordance with information supplied by the manufacturer or supplier of the facility or plant relating to its erection or its installation; and
 - (ii) consistent with the occupational health and safety of persons at the facility; and
- (b) it was reasonable for the person to rely on that information.

(4) Nothing in this clause limits the generality of what constitutes reasonably practicable steps as required by clause 7, 8, 9, 10, 11 or 12.

***Division 2 – Regulations relating to
occupational health and safety*****Regulations relating to occupational health
and safety**

15. (1) The regulations may make provision relating to any matter affecting, or likely to affect, the occupational health and safety of persons at a facility.

(2) Regulations made for the purposes of subclause (1) may make provision for any or all of the following:

- (a) prohibiting or restricting the performance of all work or specified work at a facility;
- (b) prohibiting or restricting the use of all plant or specified plant at a facility;
- (c) prohibiting or restricting the carrying out of all processes or a specified process at a facility;
- (d) prohibiting or restricting the storage or use of all substances or specified substances at a facility;
- (e) specifying the form in which information required to be made available under clause 10(1)(c) or clause 11(1)(c) is to be so made available;
- (f) prohibiting, except in accordance with licences granted under the regulations, the use of specified plant or specified substances at a facility;

- (g) providing for –
 - (i) the issue, variation, renewal, transfer, suspension and cancellation of those licences; and
 - (ii) the conditions to which the licences may be subject;
- (h) regulating the maintenance and testing of plant used at a facility;
- (i) regulating the labelling or marking of substances used at a facility;
- (j) regulating the transport of specified plant or specified substances for use at a facility;
- (k) prohibiting the performance, at a facility, of specified activities or work except –
 - (i) by persons who satisfy requirements of the regulations as to qualifications, training or experience; or
 - (ii) under the supervision specified in the regulations;
- (l) requiring specified action to avoid accidents or dangerous occurrences;
- (m) providing for, or prohibiting, specified action in the event of accidents or dangerous occurrences;
- (n) providing for the employment at a facility of persons to perform specified duties relating to the maintenance of

occupational health and safety at the facility;

- (o) regulating the provision and use, at a facility, of protective clothing and equipment, safety equipment and rescue equipment;
- (p) providing for monitoring the health of members of the workforce at a facility and the conditions at the facility;
- (q) requiring employers to keep records of matters related to the occupational health and safety of employees;
- (r) providing for the provision of first aid equipment and facilities at facilities.

PART 3 - WORKPLACE ARRANGEMENTS

Division 1 - Designated work groups

Subdivision 1 - Establishment of designated work groups

Establishment of designated work groups by request

16. (1) A request to the operator of a facility to enter into consultations to establish designated work groups in relation to the members of the workforce at the facility may be made by –

- (a) any member of the workforce; or
- (b) if a member of the workforce requests a workforce representative in relation to the member to make the request to the operator, that workforce representative.

(2) The operator of a facility must, within 14 days after receiving a request under subclause (1), enter into consultations with –

- (a) if any member of the workforce made a request to establish designated work groups –
 - (i) that member of the workforce; and
 - (ii) if that member requests that the operator enter into consultations with a workforce representative in relation to the member, that workforce representative; and
 - (iii) each employer (if any) of members of the workforce; and
- (b) if a workforce representative made a request to establish designated work groups –
 - (i) if a member of the workforce requests that the operator enter into consultations with that workforce representative, that workforce representative; and
 - (ii) each employer of members of the workforce.

(3) Within 14 days after the completion of consultations about the establishment of the designated work groups, the operator must, by notifying the members of the workforce, establish the designated work groups in accordance with the outcome of the consultations.

Establishment of designated work groups at initiative of operator

17. (1) If, at any time, the operator of a facility considers that designated work groups should be established, the operator must enter into consultations with –

- (a) all members of the workforce; and
- (b) if a member of the workforce requests that the operator enter into consultations with a workforce representative in relation to the member, that workforce representative; and
- (c) each employer (if any) of members of the workforce.

(2) Within 14 days after the completion of consultations about the establishment of the designated work groups, the operator must, by notifying the members of the workforce, establish the designated work groups in accordance with the outcome of the consultations.

Subdivision 2 – Variation of designated work groups**Variation of designated work groups by request**

18. (1) A request to the operator of a facility to enter into consultations to vary designated work groups that have already been established in relation to the members of the workforce at the facility may be made by –

- (a) any member of the workforce; or
- (b) if a member of the workforce requests a workforce representative in relation to the member to make the request to the operator, that workforce representative.

(2) The operator of a facility must, within 14 days after receiving a request under subclause (1), enter into consultations with –

- (a) if any member of the workforce made a request to vary designated work groups –
 - (i) that member of the workforce; and
 - (ii) the health and safety representative of each designated work group affected by the proposed variation; and
 - (iii) each work group employer (if any) in relation to each designated work group affected by the proposed variation; and
- (b) if a workforce representative made a request to vary designated work groups –
 - (i) if a member of a designated work group affected by the proposed variation requests that the operator enter into consultations with that workforce representative in relation to the group, that workforce representative; and

- (ii) the health and safety representative of each designated work group affected by the proposed variation; and
- (iii) each work group employer (if any) in relation to each designated work group affected by the proposed variation.

(3) If –

- (a) consultations take place about the variation of designated work groups that have already been established; and
- (b) as a result of the consultations, it has been determined that the variation of some or all of those designated work groups is justified –

then, within 14 days after the completion of the consultations, the operator must, by notifying the members of the workforce who are affected by the variation, vary the designated work groups in accordance with the outcome of the consultations.

Variation of designated work groups at initiative of operator

19. (1) If the operator of a facility believes the designated work groups should be varied, the operator may, at any time, enter into consultations about the variations with –

- (a) the health and safety representative of each of the designated work groups affected by the proposed variation; and

- (b) if a member of a designated work group affected by the proposed variation requests that the operator enter into consultations with the workforce representative in relation to the group, that workforce representative; and
- (c) each work group employer (if any) in relation to each designated work group affected by the proposed variation.

(2) If –

- (a) consultations take place about the variation of designated work groups that have already been established; and
- (b) as a result of the consultations, it has been determined that the variation of some or all of those designated work groups is justified –

then, within 14 days after the completion of the consultations, the operator must, by notifying the members of the workforce who are affected by the variation, vary the designated work groups in accordance with the outcome of the consultations.

Subdivision 3 – General

Referral of disagreement to reviewing authority

20. (1) If, in the course of consultation under clause 16, 17, 18 or 19, there is a disagreement between any of the parties to the consultation about 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.

(2) If the matter of a disagreement is referred to the reviewing authority, the parties to the disagreement must complete the consultation in accordance with the resolution of that matter by the reviewing authority.

Manner of grouping members of the workforce

21. (1) Consultations about the establishment or variation of a designated work group must be directed principally at the determination of the manner of grouping members of the workforce –

- (a) that best and most conveniently enables their 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 group member.

(2) The parties to the consultations must have regard, in particular, to –

- (a) the number of members of the workforce at the facility to which the consultation relates; and
- (b) the nature of each type of work performed by those members; and
- (c) the number and grouping of those members who perform the same or similar types of work; and

- (d) the workplaces where each type of work is performed; and
- (e) the nature of any risks to health and safety at each of those workplaces; and
- (f) any overtime or shiftworking arrangement at the facility.

(3) The designated work groups must be established or varied in such a way that, so far as practicable, each of the members of the workforce at a facility is in a designated work group.

(4) All the members of the workforce at a facility may be in one designated work group.

***Division 2 – Health and safety representatives
Subdivision 1 – Selection of health and safety
representatives***

Selection of health and safety representatives

22. (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 a member of the workforce included in the group.

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

- (a) all the members of the workforce in the group unanimously agree to the selection; or

- (b) the person is elected as the health and safety representative of the group in accordance with clause 23.

Election of health and safety representatives

23. (1) If –

- (a) there is a vacancy in the office of health and safety representative for a designated work group; and
- (b) within a reasonable time after the vacancy occurs, a person has not been selected under clause 22(3)(a) –

the operator of the facility must invite nominations from all group members for election as the health and safety representative of the group.

(2) If the office of health and safety representative is vacant and the operator has not invited nominations within a further reasonable time that is no later than 6 months after the vacancy occurred, the Safety Authority may direct the operator to do so.

(3) If there is more than one candidate for election at the close of the nomination period, the operator must conduct, or arrange for the conduct of, an election at the operator's expense.

(4) An election conducted or arranged to be conducted under subclause (3) must be conducted in accordance with regulations made for the purposes of this subclause if this is requested by the lesser of –

- (a) 100 members of the workforce normally in the designated work group; or
- (b) a majority of the members of the workforce normally in the designated work group.

(5) If there is only one candidate for election at the close of the nomination period, that person is taken to have been elected.

(6) A person cannot be a candidate in the election if he or she is disqualified under clause 29.

(7) All the members of the workforce in the designated work group are entitled to vote in the election.

(8) An operator conducting or arranging for the conduct of an election under this clause must comply with any relevant directions issued by the Safety Authority.

List of health and safety representatives

24. The operator of a facility must –

- (a) prepare and keep up to date a list of all the health and safety representatives of designated work groups comprising members of the workforce performing work at the facility; and
- (b) ensure that the list is available for inspection, at all reasonable times, by –
 - (i) the members of the workforce at the facility; and

- (ii) OHS inspectors.

Members of designated work group must be notified of selection, &c., of health and safety representative

25. The operator of a facility must –

- (a) notify members of a designated work group in relation to the facility of a vacancy in the office of health and safety representative for the designated work group within a reasonable time after the vacancy arises; and
- (b) notify those members of the name of any person selected (whether under clause 22(3)(a) or (b)) as health and safety representative for the designated work group within a reasonable time after the selection is made.

Term of office

26. (1) A health and safety representative for a designated work group holds office –

- (a) if, in consultations that took place under clause 16, 17, 18 or 19, the parties to the consultations agreed to the period for which the health and safety representative for the group was to hold office, for that period; or
- (b) if paragraph (a) does not apply, for 2 years.

(2) The term of office of a health and safety representative begins at the start of the day on which he or she was selected.

(3) Nothing in this clause prevents a health and safety representative from being 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 Safety Authority for the purposes of this clause.

(2) The operator of the facility concerned must permit the representative to take any time off work, without loss of remuneration or other entitlements, that is necessary to undertake the training.

(3) If a person other than the operator is the employer of the representative, that person must permit the representative to take any time off work, without loss of remuneration or other entitlements, that is necessary to undertake the training.

Resignation, &c., of health and safety representatives

28. (1) A person ceases 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 a group member of that designated work group; or
- (c) the person's term of office expires without the person having been selected, under clause 22, to be the health and safety representative for the designated work group for a further term; or
- (d) the person is disqualified under clause 29.

(2) A person may resign as the health and safety representative for a designated work group by notice in writing delivered to the operator and to each work group employer.

(3) If a person resigns as the health and safety representative for a designated work group, the person must notify the resignation to the group members.

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

- (a) the group members; and
- (b) the operator and each work group employer –

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

Disqualification of health and safety representatives

29. (1) An application for the disqualification of a health and safety representative for a designated work group may be made to the Safety Authority by –

- (a) the operator; or
- (b) a work group employer; or
- (c) at the request of a group member of the designated work group, a workforce representative in relation to the designated work group.

(2) An application under subclause (1) may be made on either or both of the following grounds:

- (a) that action taken by the representative in the exercise or purported exercise of a power under clause 31(1) or any other provision of this Schedule was taken –
 - (i) with the intention of causing harm to the operator or work group employer or to an undertaking of the operator or work group employer; or
 - (ii) unreasonably, capriciously or not 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 operator or work group employer.

(3) On an application under subclause (1), the Safety Authority may disqualify the representative, for a specified period not exceeding 5 years, from being a health and safety representative for any designated work group, if the Safety Authority is satisfied that the representative has acted in a manner referred to in subclause (2).

(4) In making a decision under subclause (3), the Safety Authority must have regard to –

- (a) the harm (if any) that was caused to the operator or work group employer or to an undertaking of the operator or work group 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
- (d) any other matters as the Safety Authority thinks relevant.

Deputy health and safety representatives

30. (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 way as a health and safety representative under clause 22.

(3) If the health and safety representative for a designated work group –

- (a) ceases to be the health and safety representative; or
- (b) is unable (because of absence or for any other reason) to exercise the powers of a health and safety representative –

then –

- (c) the powers may be exercised by the deputy health and safety representative (if any) for the group; and
- (d) this Schedule (other than this clause) applies in relation to the deputy health and safety representative accordingly.

***Subdivision 2 – Powers of health and safety
representatives***

Powers of health and safety representatives

31. (1) A health and safety representative for a designated work group may, for the purpose of promoting or ensuring the health and safety at a workplace of the group members –

- (a) do all or any of the following:
 - (i) inspect the whole or any part of the workplace if there has, in the immediate past, been an accident or a dangerous occurrence at the

workplace, or if there is an immediate threat of such an accident or dangerous occurrence;

- (ii) inspect the whole or any part of the workplace if the health and safety representative has given reasonable notice of the inspection to the operator's representative at the facility and to any other person having immediate control of the workplace;
- (iii) make a request to an OHS inspector or to the Safety Authority that an inspection be conducted at the workplace;
- (iv) accompany an OHS inspector during any inspection at the workplace by the OHS inspector (whether or not the inspection is being conducted as a result of a request made by the health and safety representative);
- (v) if there is no health and safety committee in respect of the members of the workforce at the facility, represent group members in consultations with the operator and any work group employer about the development, implementation and review of measures to ensure the health and safety of those members at the workplace;

- (vi) if a health and safety committee has been established in respect of the members of the workforce at the facility, examine any of the records of that committee; and
- (b) investigate complaints made by any group member to the health and safety representative about the health and safety of any of the members of the workforce (whether in the group or not); and
- (c) with the consent of a group member, be present at any interview about health and safety at work between that member and –
 - (i) an OHS inspector; or
 - (ii) the operator or a person representing the operator; or
 - (iii) a work group employer or a person representing that employer; and
- (d) obtain access to any information under the control of the operator or any work group employer –
 - (i) relating to risks to the health and safety of any group member; and
 - (ii) relating to the health and safety of any group member; and
- (e) issue provisional improvement notices in accordance with clause 35.

(2) Subclause (1)(d)(ii) has effect subject to clause 33.

Assistance by consultant

32. (1) 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.

(2) A health and safety representative for a designated work group may –

- (a) be assisted by a consultant at a workplace at which work is performed; or
- (b) provide to a consultant information that has been provided to the health and safety representative about a group member under clause 31(1)(d) –

only if the operator or the Safety Authority has, in writing, agreed to the provision of that assistance at that workplace or the provision of that information, as the case may be.

(3) Neither the operator nor any workplace employer becomes, because of the agreement under subclause (2) to the provision of assistance by a consultant, liable for any remuneration or other expenses incurred in connection with the consultant's activities.

(4) If 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, about

health and safety at work, between a group member and –

- (a) an OHS inspector; or
- (b) the operator or any work group employer or a person representing the operator or that employer –

if, and only if, the group member consents to the presence of the consultant.

Information

33. (1) Neither –

- (a) a health and safety representative; nor
- (b) a consultant assisting a health and safety representative –

is entitled, under clause 31(1)(d)(ii), to have access to information in respect of which a group member is entitled to claim, and does claim, legal professional privilege.

(2) Neither –

- (a) a health and safety representative; nor
- (b) a consultant assisting a health and safety representative –

is entitled, under clause 31(1)(d)(ii), to have access to information of a confidential medical nature relating to a person who is or was a group member unless –

- (c) the person has delivered to the operator or any work group 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

- (d) the information is in a form that does not identify the person or enable the identity of the person to be discovered.

Obligations and liability of health and safety representatives

34. This Schedule does not –

- (a) impose an obligation on a person to exercise any power conferred on the person because the person is a health and safety representative; or
- (b) render a person liable in civil proceedings because of –
 - (i) a failure to exercise such a power; or
 - (ii) the way such a power was exercised.

Provisional improvement notices

35. (1) If –

- (a) a health and safety representative for a designated work group believes, on reasonable grounds, that a person –

- (i) is contravening a provision of a listed OHS law; or
 - (ii) has contravened a provision of a listed OHS law and is likely to contravene that provision again; and
- (b) the contravention affects or may affect one or more group members –

the representative must consult with the person supervising the relevant activity 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 any or all of the persons (each of whom is in this clause called a "**responsible person**") responsible for the contravention.

(3) If a responsible person is the operator, the improvement notice may be issued to the operator by giving it to the operator's representative at the facility.

(4) If it is not practicable to issue the notice to a responsible person (other than the operator or the supervisor) by giving it to that responsible person –

- (a) the notice may be issued to that responsible person by giving it to the person who for the time being is, or may reasonably be presumed to be, on behalf of the responsible person, in charge of the activity to which the notice relates; and

- (b) if the notice is so issued, a copy of the notice must be given to the responsible person as soon as practicable afterwards.

(5) The notice must –

- (a) specify the contravention 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 that –
 - (i) is not less than 7 days beginning on the day after the notice is issued; and
 - (ii) is, in the representative's opinion, reasonable –

within which the responsible person is to take action necessary to prevent any further contravention or to prevent the likely contravention, as the case may be.

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

(7) If, 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.

(8) On issuing the notice, the health and safety representative must give a copy of the notice to –

- (a) if the operator is not a responsible person, the operator; and
- (b) each work group employer other than a work group employer who is a responsible person; and
- (c) if the supervisor is not a responsible person, the supervisor; and
- (d) if the notice relates to any plant, substance or thing that is owned by a person other than a responsible person or a person to whom a copy of the notice is given under paragraph (a), (b) or (c), that owner.

Effect of provisional improvement notice

36. (1) Within 7 days after a provisional improvement notice is issued under clause 35 –

- (a) the responsible person; or
- (b) any other person, to whom a copy of the notice has been given under clause 35(8) –

may request the Safety Authority or an OHS inspector for an inspection of the matter to be conducted.

(2) On the request being made, the operation of the notice is suspended pending the determination of the matter by an OHS inspector.

(3) As soon as possible after a request is made, an inspection must be conducted of the work that is

the subject of the disagreement, and the OHS inspector conducting the inspection 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 clause 35(8) accordingly; and
- (b) make decisions, and exercise powers, under Part 4, as the OHS inspector considers necessary in relation to the work.

(4) If the OHS inspector varies a notice, the notice as so varied has effect –

- (a) so far as the notice concerns obligations imposed on the responsible person that are unaffected by the variation, as if the notice as so varied resumed effect on the day of the variation; and
- (b) so far as the notice concerns new obligations imposed by virtue of the variation, as if the notice as so varied were a new notice issued on the day of the variation.

(5) If the notice is issued to a responsible person, the responsible person must –

- (a) notify each group member 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.

(6) The notice ceases to have effect if –

- (a) it is cancelled by an OHS inspector or by the health and safety representative; or
- (b) the responsible person –
 - (i) takes the action, if any, specified in the notice; or
 - (ii) if no action is so specified, takes the action necessary to prevent the further contravention, or likely contravention, concerned.

(7) 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 reasonable steps to inform the health and safety representative who issued the notice of the action taken to comply with the notice.

(8) For the purposes of clause 62, if the OHS inspector confirms or varies the notice, the OHS inspector is taken to have decided, under clause 58, to issue an improvement notice in those terms.

***Subdivision 3 – Duties of operator and other
employers in relation to health and safety
representatives***

**Duties of operator and other employers in
relation to health and safety representatives**

37. (1) The operator of a facility, in relation to which a designated work group having a health and safety representative has been established, must –

- (a) on 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 group members perform work, being changes that may affect their health and safety; and
- (b) in relation to a workplace at which some or all of the group members perform work –
 - (i) permit the representative to make any inspection of the workplace that the representative is entitled to make in accordance with clause 31(1)(a)(i) and to accompany an OHS inspector during an inspection at the workplace by the OHS inspector; and
 - (ii) if there is no health and safety committee in respect of the members of the workforce, on being requested to do so by the representative, consult with the representative about the

development, implementation and review of measures to ensure the health and safety of group members; and

- (c) permit the representative to be present at any interview at which the representative is entitled to be present under clause 31(1)(c); and
- (d) provide to the representative access to any information to which the representative is entitled to obtain access under clause 31(1)(d)(i) or (ii) and to which access has been requested; and
- (e) permit the representative to take any time off work, without loss of remuneration or other entitlements, that is necessary to exercise the powers of a health and safety representative; and
- (f) provide the representative with access to any facilities that 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) Subclause (1)(d) has effect subject to subclauses (3) and (4).

(3) The operator must not permit a health and safety representative in relation to a designated work group to have access to information that –

- (a) is of a confidential medical nature under the control of the operator; and
- (b) relates to a person who is or was a group member –

unless –

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

(4) The operator is not required to give a health and safety representative access to any information in respect of which the operator is entitled to claim, and does claim, legal professional privilege.

(5) The duties imposed by this clause on the operator in respect of the health and safety representative for a designated work group apply equally, to the extent that the matters to which the duties relate are within the control of a work group employer or of a supervisor of particular work, to that employer and to that supervisor.

Division 3 – Health and safety committees

Health and safety committees

38. (1) A health and safety committee must be established in relation to the members of the workforce at a facility if –

- (a) the number of those members normally present at the facility is not less than 50 (whether or not those members are all at work at the facility at the same time); and
- (b) the members of the workforce are included in one or more designated work groups; and
- (c) the operator is requested to establish the committee by the health and safety representative for the designated work group or for one of the designated work groups.

(2) The health and safety committee consists of –

- (a) the number of members specified in an agreement reached between the operator and the members of the workforce; or
- (b) if there is no such agreement, an equal number of –
 - (i) members, chosen by the members of the workforce, to represent the interests of members of the workforce; and
 - (ii) members, chosen by the operator, to represent the interests of the operator and employers (other than the operator) of members of the workforce.

(3) The agreement referred to in subclause (2)(a) may –

- (a) specify the persons who are to be members to represent the interests of the operator and employers (other than the operator) of members of the workforce; and
- (b) provide for the way in which persons who are to be members to represent the interests of members of the workforce are to be chosen.

(4) If regulations made for the purposes of this clause specify procedures for the selection of persons as members of health and safety committees, to represent the interests of members of the workforce, an agreement referred to in subclause (2)(a) must not provide for members to be chosen in a way inconsistent with the regulations.

(5) A health and safety committee must hold a meeting 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 must retain those minutes for a period of not less than 3 years.

(8) This clause does not prevent an operator 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 operator.

Functions of health and safety committees

39. (1) A health and safety committee has the following functions:

- (a) to assist the operator of the facility concerned –
 - (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 members of the workforce;

- (b) to facilitate cooperation between the operator of the facility, employers (other than the operator) of members of the workforce, and members of the workforce, in relation to occupational health and safety matters;
- (c) to assist the operator to disseminate among members of the workforce, in appropriate languages, information relating to health and safety at work;
- (d) any prescribed functions;
- (e) any other functions that are agreed between the operator 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) This Schedule does not –

- (a) impose 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) render 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 the operator and other employers in relation to health and safety committees

40. (1) If there is a health and safety committee, the operator and any employer (other than the operator) of a member of the workforce must –

- (a) make available to the committee any information possessed by the operator or that employer relating to risks to health and safety to members of the workforce; and
- (b) permit any member of the committee who is a member of the workforce to take 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) Subclause (1)(a) has effect subject to subclauses (3) and (4).

(3) The operator or any employer (other than the operator) of a member of the workforce must not make available to a health and safety committee information of a confidential nature relating to a person who is or was a member of the workforce, unless –

- (a) the person has authorised 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.

(4) The operator or any employer (other than the operator) of a member of the workforce is not required to make available to a health and safety committee any information in respect of which the operator or employer is entitled to claim, and does claim, legal professional privilege.

Division 4 – Emergency procedures

Action by health and safety representatives

41. (1) If a health and safety representative for a designated work group has reasonable cause to believe that there is an imminent and serious danger to the health or safety of any person at or near the facility unless a group member or group members cease to perform particular work, the representative must –

- (a) inform a person (a “**supervisor**”) supervising the group member or group members in the performance of the work of the danger; or

- (b) if no supervisor can be contacted immediately –
 - (i) direct the group member or group members to cease, in a safe manner, to perform the work; and
 - (ii) as soon as practicable, inform a supervisor that the direction has been given.

(2) If a supervisor is informed under subclause (1)(a) of a danger to the health or safety of any person at or near the facility, the supervisor must take the action he or she thinks appropriate to remove that danger, which may include directing a group member or group members to cease, in a safe manner, to perform the work.

(3) If –

- (a) a health and safety representative has informed a supervisor under subclause (1)(a) of a danger; and
- (b) the representative has reasonable cause to believe that, despite any action taken by the supervisor in accordance with subclause (2), there continues to be an imminent and serious danger to the health or safety of any person at or near the facility unless the group member or group members ceases to perform particular work –

the representative must –

- (c) direct the group member or group members to cease, in a safe manner, to perform the work; and

- (d) as soon as practicable, inform the supervisor that the direction has been given.

(4) If –

- (a) a health and safety representative gives a direction under subclause (1)(b), but is unable to agree with a supervisor whom the representative has informed under that subclause that there is a need for a direction under that subclause; or
- (b) a health and safety representative gives a direction under subclause (3)(c) –

the representative or the supervisor may request the Safety Authority or an OHS inspector that an inspection be conducted of the work that is the subject of the direction.

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

(6) This clause does not limit the power of a health and safety representative under clause 31(1)(a)(iii) to request an OHS inspector or the Safety Authority that an inspection be conducted at the workplace.

Directions to perform other work

42. This clause applies if –

- (a) a group member who is an employee has ceased to perform work, in accordance with the direction of a health and safety representative under clause 41(1)(b) or clause 41(3)(c); and
- (b) the cessation of work does not continue after –
 - (i) 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
 - (ii) an OHS inspector has, under clause 41(5), made a decision to 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.

Division 5 – Exemptions

Exemptions

43. (1) The Safety Authority may, in accordance with the regulations, make a written order exempting a specified person or class of person from any or all of the provisions of this Part (other than this clause).

(2) The Safety Authority must not make an order under subclause (1) unless it is satisfied on reasonable grounds that it is impracticable for the person to comply with the provision or provisions.

PART 4 – INSPECTIONS

***Division 1 – Powers, functions and duties of
OHS inspectors***

**Powers, functions and duties of OHS
inspectors**

44. (1) An OHS inspector has the powers, functions and duties conferred or imposed by the listed OHS laws.

(2) The Safety Authority may give written directions specifying the manner in which, and the conditions subject to which, powers conferred on OHS inspectors by a listed OHS law are to be exercised. If it does so, the powers of OHS inspectors must be exercised in accordance with those directions.

(3) The Safety Authority may, by notice in writing, impose restrictions, not inconsistent with any direction in force under subclause (2), on the powers that are conferred on a particular OHS inspector by a listed OHS law. If it does so, the powers of the OHS inspector are taken to have been restricted accordingly.

Division 2 – Inspections

Inspections

45. (1) An OHS inspector may, at any time, conduct an inspection –

- (a) to ascertain whether the requirements of, or any requirements properly made under, a listed OHS law are being complied with; or
- (b) concerning a contravention or a possible contravention of a listed OHS law; or
- (c) concerning an accident or dangerous occurrence that has happened at a facility.

(2) The Safety Authority may direct an OHS inspector to conduct an inspection –

- (a) to ascertain whether the requirements of, or any requirements properly made under, a listed OHS law are being complied with; or
- (b) concerning a contravention or a possible contravention of a listed OHS law; or
- (c) concerning an accident or dangerous occurrence that has happened at a facility –

and the OHS inspector must, unless the Safety Authority revokes the direction, conduct an inspection accordingly.

***Division 3 – Powers of OHS inspectors in
relation to conduct of inspections
Subdivision 1 – General powers of entry and
search***

Powers of entry and search – facilities

46. (1) An OHS inspector may, for the purposes of an inspection, at any reasonable time during the day or night –

- (a) enter the facility to which the inspection relates and do all or any of the following:
 - (i) search the facility;
 - (ii) inspect, examine, take measurements of, or conduct tests concerning, any workplace at the facility or any plant, substance or thing at the facility;
 - (iii) take photographs of, make video recordings of, or make sketches of, any workplace at the facility or any plant, substance or thing at the facility;
 - (iv) inspect, take extracts from, or make copies of, any documents at the facility that the OHS inspector has reasonable grounds to believe relate, or are likely to relate, to the subject matter of the inspection; and
- (b) inspect the seabed and subsoil in the vicinity of the facility to which the inspection relates.

(2) Immediately on entering a facility for the purposes of an inspection, an OHS inspector must take reasonable steps to notify the purpose of entering the facility to –

- (a) the operator's representative at the facility; and
- (b) if there is a health and safety representative for a designated work group having a group member likely to be affected by the matter the subject of the inspection, that representative –

and must, on being requested to do so by the person referred to in paragraph (a) or (b), produce for inspection by that person –

- (c) the OHS inspector's identity card; and
- (d) a copy of the Safety Authority's written direction (if any) to conduct the inspection; and
- (e) a copy of the restrictions (if any) imposed on the powers of the OHS inspector under clause 44(3).

(3) If there is a health and safety representative for a designated work group having a group member likely to be affected by the matter the subject of the inspection, the OHS inspector must afford the health and safety representative a reasonable opportunity to consult on the matter the subject of the inspection.

Powers of entry and search – regulated business premises (other than facilities)

47. (1) An OHS inspector may, for the purposes of an inspection –

- (a) at any reasonable time, enter any regulated business premises (other than a facility) if the OHS inspector has reasonable grounds to believe that there are likely to be at those premises documents that relate to a facility that is, or to facility operations that are, the subject of the inspection; and
- (b) search for, inspect, take extracts from, or make copies of, any such documents at those premises.

(2) Immediately on entering premises referred to in subclause (1), an OHS inspector must take reasonable steps to notify the purpose of the entry to the occupier of those premises, and must, on being requested to do so by the occupier, produce for inspection by the occupier –

- (a) the OHS inspector's identity card; and
- (b) a copy of the Safety Authority's written direction (if any) to conduct the inspection; and
- (c) a copy of the restrictions (if any) imposed on the powers of the OHS inspector under clause 44(3).

Powers of entry and search – premises (other than regulated business premises)

48. (1) An OHS inspector may, for the purposes of an inspection –

- (a) enter any premises (other than regulated business premises) if the OHS inspector has reasonable grounds to believe that there are likely to be at those premises documents that relate to a facility that is, or to facility operations that are, the subject of the inspection; and
- (b) search for, inspect, take extracts from, or make copies of, any such documents at those premises.

(2) An OHS inspector may exercise the powers referred to in subclause (1) to enter premises only –

- (a) if the premises are not a residence –
 - (i) in accordance with a warrant under clause 49; or
 - (ii) with the consent of the occupier of the premises; or
- (b) if the premises are a residence, with the consent of the occupier of the premises.

(3) Immediately on entering premises referred to in subclause (1), an OHS inspector must –

- (a) take reasonable steps to notify the purpose of the entry to the occupier of those premises; and

- (b) take reasonable steps to produce, for inspection by the occupier, the OHS inspector's identity card; and
- (c) on being requested to do so by the occupier, produce, for inspection by the occupier –
 - (i) a copy of the Safety Authority's written direction (if any) to conduct the inspection; and
 - (ii) a copy of the restrictions (if any) imposed on the powers of the OHS inspector under clause 44(3).

(4) If –

- (a) an OHS inspector enters premises in accordance with a warrant under clause 49; and
- (b) the occupier of the premises is present at the premises –

the OHS inspector must make a copy of the warrant available to the occupier.

(5) Before obtaining the consent of a person as mentioned in subclause (2)(a) or (b), an OHS inspector must inform the person that –

- (a) the person may refuse consent; and
- (b) the consent may be withdrawn.

(6) The consent of a person is not effective for the purposes of subclause (2) unless the consent is voluntary.

Warrant to enter premises (other than regulated business premises)

49. (1) An OHS inspector may apply to a magistrate for a warrant authorising the OHS inspector, with any assistance as the OHS inspector thinks necessary, to exercise the powers referred to in clause 48(1) in relation to particular premises (other than a residence).

(2) The application must be supported by evidence on oath (whether oral or by affidavit) that sets out the grounds on which the OHS inspector is applying for the warrant.

(3) If the magistrate is satisfied that there are reasonable grounds for issuing the warrant, the magistrate may issue the warrant.

(4) A warrant issued under subclause (3) must state –

- (a) the name of the OHS inspector; and
- (b) whether the inspection may be carried out at any time or only during specified hours of the day; and
- (c) the day on which the warrant ceases to have effect; and
- (d) the purposes for which the warrant is issued.

(5) The day specified under subclause (4)(c) is not to be more than 7 days after the day on which the warrant is issued.

(6) The purposes specified under subclause (4)(d) must include the identification of

the premises in relation to which the warrant is issued.

(7) The rules to be observed with respect to search warrants under the *Search Warrants Act 1997* extend and apply to warrants under this clause except to the extent of any inconsistency with this clause.

Obstructing or hindering OHS inspector

50. A person must not, without reasonable excuse, obstruct or hinder an OHS inspector in the exercise of an OHS inspector's powers under clause 46, 47 or 48.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 275 penalty units; or
- (b) an individual, a fine not exceeding 55 penalty units.

Subdivision 2 – Other powers

Power to require assistance and information

51. (1) An OHS inspector may, to the extent that it is reasonably necessary to do so in connection with the conduct of an inspection, require –

- (a) the operator of a facility; or
- (b) the person in charge of operations at a workplace in relation to a facility; or
- (c) a member of the workforce at a facility;
or

- (d) any person representing a person referred to in paragraph (a) or (b) –

to provide the OHS inspector with reasonable assistance and facilities –

- (e) that is or are reasonably connected with the conduct of the inspection at or near the facility; or
- (f) for the effective exercise of the OHS inspector's powers under this Schedule in connection with the conduct of the inspection at or near the facility.

(2) The reasonable assistance referred to in subclause (1) includes, so far as the operator of the facility is concerned –

- (a) appropriate transport to or from the facility for the OHS inspector and for any equipment required by the OHS inspector, or any article of which the OHS inspector has taken possession; and
- (b) reasonable accommodation and means of subsistence while the OHS inspector is at the facility.

(3) A person must not fail, without reasonable excuse, to comply with a requirement under this clause.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 165 penalty units; or

- (b) an individual, a fine not exceeding 33 penalty units or imprisonment for a term not exceeding 6 months, or both.

**Power to require the answering of questions
and the production of documents or articles**

52. (1) If –

- (a) an OHS inspector believes on reasonable grounds that a person is capable of answering a question that is reasonably connected with the conduct of an inspection; and
- (b) the person is –
 - (i) the operator of a facility; or
 - (ii) the person in charge of operations at a workplace in relation to a facility; or
 - (iii) a member of the workforce at a facility; or
 - (iv) any person representing a person referred to in subparagraph (i) or (ii) –

the OHS inspector may, to the extent that it is reasonably necessary to do so in connection with the conduct of the inspection, require the person to answer the question put by the OHS inspector.

(2) If, at the time when a requirement under subclause (1) is imposed on a person, the person is not physically present on regulated business

premises, the person is not obliged to comply with the requirement unless the requirement –

- (a) is in writing; and
- (b) specifies the day on or before which the question is to be answered (being at least 14 days after the day on which the requirement is imposed); and
- (c) is accompanied by a statement to the effect that a failure to comply with the requirement is an offence.

(3) If –

- (a) an OHS inspector believes on reasonable grounds that a person is capable of producing a document or article that is reasonably connected with the conduct of an inspection; and
- (b) the person is –
 - (i) the operator of a facility; or
 - (ii) the person in charge of operations at a workplace in relation to a facility; or
 - (iii) a member of the workforce at a facility; or
 - (iv) any person representing a person referred to in subparagraph (i) or (ii) –

the OHS inspector may, to the extent that it is reasonably necessary to do so in connection with the conduct of the inspection, require the person to produce the document or article.

(4) If, at the time when a requirement under subclause (3) is imposed on a person, the person is not physically present on regulated business premises, the person is not obliged to comply with the requirement unless the requirement –

- (a) is in writing; and
- (b) specifies the day on or before which the document or article is to be produced (being at least 14 days after the day on which the requirement is imposed); and
- (c) is accompanied by a statement to the effect that a failure to comply with the requirement is an offence.

(5) A person must not –

- (a) fail, without reasonable excuse, to comply with a requirement under this clause; or
- (b) in purported compliance with a requirement under this clause, give information that is false or misleading in a material particular.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 165 penalty units; or
- (b) an individual, a fine not exceeding 33 penalty units or imprisonment for a term not exceeding 6 months, or both.

Privilege against self-incrimination

53. (1) A person is not excused from answering a question or producing a document or article when required to do so under clause 52 on the ground that the answer to the question, or the production of the document or article, may tend to incriminate the person or make the person liable to a penalty.

(2) However –

- (a) the answer given or document or article produced; or
- (b) answering the question or producing the document or article; or
- (c) any information, document or thing obtained as a direct or indirect consequence of the answering of the question or the production of the document or article –

is not admissible in evidence against the person –

- (d) in any civil proceedings; or
- (e) in any criminal proceedings other than proceedings for an offence against clause 52.

Power to take possession of plant, take samples of substances, &c.

54. (1) In conducting an inspection, an OHS inspector 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 facility in connection with the inspection –

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

(2) On taking possession of plant, a substance or a thing, or taking a sample of a substance or thing, the OHS inspector must, by notice in writing, inform –

- (a) the operator of the facility; and
- (b) if the plant, substance or thing is used for the performance of work by an employer of a member or members of the workforce at the facility other than the operator of the facility, that employer; and
- (c) if the plant, substance or thing is owned by a person other than a person mentioned in paragraph (a) or (b), that person; and
- (d) if there is a health and safety representative for a designated work group that includes a member of the workforce who is affected by the matter to which the inspection relates, that representative –

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

(3) If the OHS inspector gives the notice to the operator of the facility to which the inspection relates, the operator's representative at the facility must cause the notice to be displayed in a prominent place at the workplace from which the plant, substance or thing was removed.

(4) If the OHS inspector 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 OHS inspector must –

- (a) ensure that the inspection, examination, measuring or testing is conducted as soon as practicable; and
- (b) return it to the workplace as soon as practicable afterwards.

(5) As soon as practicable after completing any such inspection, examination, measurement or testing, the inspector must give a written statement setting out the results to each person whom the inspector is required to notify under subclause (2).

Power to direct that workplace, &c., not be disturbed

55. (1) An OHS inspector may give a direction under subclause (2) if, in conducting an inspection, the OHS inspector has reasonable grounds to believe that it is reasonably necessary to do so in order to –

- (a) remove an immediate threat to the health or safety of any person; or

- (b) allow the inspection, examination or taking of measurements of, or conducting of tests concerning, a facility or any plant, substance or thing at the facility.

(2) If subclause (1) applies, the OHS inspector may direct, by written notice given to the operator's representative at the facility, that the operator must ensure that –

- (a) a particular workplace; or
- (b) particular plant, or a particular substance or thing –

not be disturbed for a period specified in the direction.

(3) The period specified in the direction must be a period that the OHS inspector has reasonable grounds to believe is necessary in order to remove the threat or to allow the inspection, examination, measuring or testing to take place.

(4) The direction may be renewed by another direction in the same terms.

(5) If an OHS inspector gives a notice to the operator's representative under subclause (2), the operator's representative must cause the notice to be displayed in a prominent place at the workplace –

- (a) that is to be left undisturbed; or
- (b) where the plant, substance or thing that is to be left undisturbed is located.

(6) As soon as practicable after giving the direction, the OHS inspector must take reasonable steps to notify –

- (a) if the workplace, plant, substance or thing to which the direction relates is owned by a person other than the operator of the facility, that person; and
- (b) if there is a health and safety representative for a designated work group that includes a group member performing work –
 - (i) at a workplace; or
 - (ii) involving the plant, substance or thing –

to which the direction relates, that representative –

of the direction and the reasons for giving it.

(7) The operator of a facility to which a direction concerning a workplace, plant, substance or a thing relates must ensure that the direction is complied with.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 1 375 penalty units; or
- (b) an individual, a fine not exceeding 275 penalty units.

(8) A direction under subclause (2) must be accompanied by a statement setting out the reasons for the direction.

Power to issue prohibition notices

56. (1) If, having conducted an inspection, an OHS inspector is satisfied on reasonable grounds that it is reasonably necessary to issue a prohibition notice to the operator of a facility in order to remove an immediate threat to the health or safety of any person, the OHS inspector may issue a prohibition notice, in writing, to the operator.

(2) The notice must be issued to the operator by giving it to the operator's representative at the facility.

(3) The notice must –

- (a) specify the activity in respect of which, in the OHS inspector's opinion, the threat to health or safety has arisen, and set out the reasons for that opinion; and
- (b) either –
 - (i) direct the operator to ensure that the activity is not engaged in; or
 - (ii) direct the operator to ensure that the activity is not engaged in in a specified manner.

(4) A specified manner 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.

(5) The notice may specify action that may be taken to satisfy an OHS inspector that adequate action has been taken to remove the threat to health and safety.

(6) The operator's representative at the facility must –

- (a) give a copy of the notice to each health and safety representative (if any) for any designated work group having group members performing work that is affected by the notice; and
- (b) cause a copy of the notice to be displayed at a prominent place at or near each workplace at which that work is performed.

(7) If the notice relates to any workplace, plant, substance or thing that is owned by a person other than the operator, the OHS inspector must, upon issuing the notice, give a copy of the notice to that person.

Compliance with prohibition notice

57. (1) An operator must ensure that a prohibition notice issued to the operator is complied with.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 1 375 penalty units; or

- (b) an individual, a fine not exceeding 275 penalty units.

(2) If an OHS inspector is satisfied that action taken by the operator to remove the threat to health and safety in respect of which the notice was issued is not adequate, the OHS inspector must inform the operator accordingly.

(3) A prohibition notice ceases to have effect when an OHS inspector notifies the operator that the OHS inspector is satisfied that the operator has taken adequate action to remove the threat to health or safety.

(4) In making a decision under subclause (2), an OHS inspector may exercise any of the powers of an OHS inspector conducting an inspection that the OHS inspector considers necessary for the purposes of making the decision.

Power to issue improvement notices

58. (1) If, in conducting an inspection, an OHS inspector believes on reasonable grounds that a person –

- (a) is contravening a provision of a listed OHS law; or
- (b) has contravened a provision of a listed OHS law and is likely to contravene that provision again –

the OHS inspector may issue an improvement notice, in writing, to the person (the “**responsible person**”).

(2) If the responsible person is the operator, the improvement notice may be issued to the operator by giving it to the operator's representative at the facility.

(3) If the responsible person is an employer (other than the operator) of members of the workforce, but it is not practicable to give the notice to that employer –

- (a) the improvement notice may be issued to the employer by giving it to the operator's representative at the facility; and
- (b) if the notice is so issued, the operator must ensure that a copy of the notice is given to the employer as soon as practicable afterwards.

(4) The notice –

- (a) must specify the contravention that the OHS inspector believes is occurring or is likely to occur, and set out the reasons for that belief; and
- (b) must specify a reasonable period within which the responsible person is to take the action necessary to prevent any further contravention or to prevent the likely contravention, as the case may be; and
- (c) may specify action that the responsible person is to take during the period specified in the notice.

(5) If the OHS inspector believes on reasonable grounds that it is appropriate to do so,

the OHS inspector may, in writing and before the end of the period, extend the period specified in the notice.

(6) If an improvement notice is issued to an employer (other than the operator) of members of the workforce in circumstances other than the circumstance referred to in subclause (3), the employer must immediately ensure that a copy of the notice is given to the operator's representative at the facility.

(7) If a notice is issued to the operator or to an employer (other than the operator) of members of the workforce, the operator's representative at the facility must –

- (a) give a copy of the notice to each health and safety representative for a designated work group having group members 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 the work is being performed.

(8) On issuing a notice, the OHS inspector must give a copy of the notice to –

- (a) if the notice is –
 - (i) given to a member of the workforce who is an employee; and
 - (ii) in connection with work performed by the employee –

the employer of that employee; and

- (b) if the notice relates to any workplace, plant, substance or thing that is owned by a person other than –
 - (i) a responsible person; or
 - (ii) a person who is an employer referred to in paragraph (a) –
that owner; and
- (c) if the notice is issued to a person who owns any workplace, plant, substance or thing, because of which a contravention of a listed OHS law has occurred or is likely to occur –
 - (i) the operator of the facility; and
 - (ii) if the employer of employees who work in that workplace or who use that plant, substance or thing is a person other than the operator, that employer.

Compliance with improvement notice

59. A person to whom an improvement notice is issued must comply with it to the extent that the notice relates to any matter over which the person has control.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 550 penalty units; or
- (b) an individual, a fine not exceeding 110 penalty units.

Notices not to be tampered with or removed

60. (1) A person must not, without reasonable excuse, tamper with any notice that has been displayed under clause 54(3), clause 55(5), clause 56(6) or clause 58(7) while that notice is so displayed.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 550 penalty units; or
- (b) an individual, a fine not exceeding 110 penalty units.

(2) If a notice has been displayed under clause 54(3), a person must not, without reasonable excuse, remove the notice until the plant or thing to which the notice relates is returned to the workplace from which it was removed.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 550 penalty units; or
- (b) an individual, a fine not exceeding 110 penalty units.

(3) If a notice has been displayed under clause 55(5), clause 56(6) or clause 58(7), a person must not, without reasonable excuse, remove the notice before it has ceased to have effect.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 550 penalty units; or

- (b) an individual, a fine not exceeding 110 penalty units.

Division 4 – Reports on inspections

Reports on inspections

61. (1) If an OHS inspector has conducted an inspection, the OHS inspector must, as soon as practicable, prepare a written report relating to the inspection and give the report to the Safety Authority.

(2) The report must include –

- (a) the OHS inspector's conclusions from conducting the inspection and the reasons for those conclusions; and
- (b) any recommendations that the OHS inspector wishes to make arising from the inspection; and
- (c) any other prescribed matters.

(3) As soon as practicable after receiving the report, the Safety Authority must give a copy of the report, together with any written comments that it wishes to make –

- (a) to the operator of the facility to which the report relates; and
- (b) if the report relates to activities performed by an employee of another person, that other person; and
- (c) if the report relates to any plant, substance or thing owned by another person, that other person.

(4) The Safety Authority may, in writing, request the operator or any other person to whom the report is given to provide to the Safety Authority, within a reasonable period specified in the request, details of –

- (a) any action proposed to be taken as a result of the conclusions or recommendations contained in the report; and
- (b) if a notice has been issued under clause 56 or 58 in relation to work being performed for the operator or that other person, any action taken, or proposed to be taken, in respect of that notice –

and the operator or that other person must comply with the request.

(5) As soon as practicable after receiving a report, the operator of a facility must give a copy of the report, together with any written comment made by the Safety Authority on the report –

- (a) if there is at least one health and safety committee in respect of some or all of the members of the workforce, to each such committee; and
- (b) if there is no such committee in respect of some or all of the members of the workforce, but some or all of those members (in respect of which there is no such committee) are in at least one designated work group for which there is a health and safety representative, to each such health and safety representative.

Division 5 – Appeals**Appeals**

62. (1) If an OHS inspector, in conducting an inspection or having conducted an inspection –

- (a) decides, under clause 36, to confirm or vary a provisional improvement notice; or
- (b) decides, under clause 54, to take possession of plant, a substance or a thing at a workplace; or
- (c) decides, under clause 55, to direct that a workplace, a part of a workplace, plant, a substance or a thing not be disturbed; or
- (d) decides, under clause 56, to issue a prohibition notice; or
- (e) decides, under clause 57, that the operator of a facility 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 clause 58, to issue an improvement notice –

a person referred to in subclause (2) may appeal to the reviewing authority against the decision, by giving notice in writing to the reviewing authority.

(2) The following persons may appeal, as applicable:

- (a) the operator of the facility or any employer (other than the operator) who is affected by the decision;
- (b) a person to whom a notice has been issued under clause 35(2) or clause 58(1);
- (c) the health and safety representative for a designated work group having a group member affected by the decision;
- (d) a workforce representative in relation to the designated work group that includes a group member who is affected by the decision and who has requested the workforce representative to make the appeal;
- (e) if there is no such designated work group, and a member of the workforce affected by the decision has requested a workforce representative in relation to the member to make the appeal, that workforce representative;
- (f) a person who owns any workplace, plant, substance or thing to which the decision referred to in subclause (1)(a), (b), (c) or (f) relates.

(3) If an OHS inspector, having conducted an inspection –

- (a) decides under clause 36 to cancel a provisional improvement notice; or
- (b) decides under clause 57 that the operator of a facility to whom 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 having a group member affected by the decision; or
- (d) a workforce representative in relation to the designated work group that includes a group member who is affected by the decision and who has requested the workforce representative to make the appeal; or
- (e) if there is no such designated work group, and a member of the workforce affected by the decision has requested a workforce representative in relation to the member to make the appeal, that workforce representative.

(4) Subject to this clause, giving notice of an appeal does not affect the operation of the decision appealed against or prevent the taking of action to implement that decision, except to the extent that the reviewing authority makes an order to the contrary.

(5) If the decision appealed against is a decision, under clause 58, 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.

(6) If the decision appealed against is a decision of an OHS inspector, under clause 36, to confirm or vary a provisional improvement notice whose operation has been suspended pending the inspection of the matter to which the notice relates, 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.

Powers of reviewing authority on appeal

63. (1) On an appeal, the reviewing authority may –

- (a) affirm or revoke the decision appealed against; and
- (b) if it revokes the decision, substitute any other decision of the kind appealed against that it thinks appropriate.

(2) If the decision is –

- (a) varied; or
- (b) revoked; or
- (c) revoked with the substitution of another decision –

the decision is taken to have effect, and always to have had effect, accordingly.

(3) If –

- (a) the decision appealed against is a decision, under clause 54, to take possession of plant, substance or a thing at a workplace; and

- (b) the decision is not affirmed –

the OHS inspector 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 practicable.

PART 5 – GENERAL

Notifying and reporting accidents and dangerous occurrences

64. (1) If, at or near a facility, there is –

- (a) an accident that causes the death of, or serious personal injury to, any person; or
- (b) an accident that causes a member of the workforce to be incapacitated from performing work for a period prescribed for the purposes of this paragraph; or
- (c) a dangerous occurrence –

the operator must, in accordance with the regulations, give the Safety Authority notice of, and a report about, the accident or dangerous occurrence.

(2) Regulations made for the purposes of subclause (1) (other than regulations made for the purpose of subclause (1)(b)) may prescribe –

- (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 the 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 the report.

(3) Subclause (2) does not limit regulations that may be made for the purposes of subclause (1).

Records of accidents and dangerous occurrences to be kept

65. (1) The operator of a facility must maintain, in accordance with the regulations, a record of each accident or dangerous occurrence in respect of which the operator is required by clause 64 to notify the Safety Authority.

(2) Regulations made for the purposes of subclause (1) may prescribe –

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

(3) Subclause (2) does not limit regulations that may be made for the purposes of subclause (1).

Code of practice

66. (1) The regulations may prescribe codes of practice for the purpose of providing practical guidance to operators of facilities and employers (other than operators) of members of the workforce at facilities.

(2) A person is not liable to any civil or criminal proceedings for contravening a code of practice.

Use of codes of practice in proceedings

67. (1) This clause applies if, in any proceedings for an offence against a listed OHS law, it is alleged that a person contravened a provision of a listed OHS law in relation to which a code of practice was in effect at the time of the alleged contravention.

(2) The code of practice is admissible in evidence in those proceedings.

(3) 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 –

- (a) any provision of the code of practice is relevant to that matter; and
- (b) the person failed at any material time to comply with that provision of the code of practice –

that matter is treated as proved unless the court is satisfied that in respect of that matter the person complied with that provision of a listed OHS law otherwise than by complying with the code of practice.

Interference, &c., with equipment, &c.

68. A person must not, without reasonable excuse, do anything that results in the interference with, or

the rendering ineffective of, any protective equipment or safety device provided for the occupational health and safety or welfare of members of the workforce at a facility if the person knew (or ought reasonably to have known) that the equipment or device was protective equipment or a safety device.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 165 penalty units; or
- (b) a natural person, a fine not exceeding 33 penalty units or imprisonment for a term not exceeding 6 months, or both.

Members of workforce not to be levied

69. The operator of a facility or an employer (other than the operator) of members of the workforce at a facility must not levy, or permit to be levied, on a member of the workforce any charge in respect of anything done or provided in accordance with a listed OHS law in order to ensure the occupational health and safety or welfare of persons at or near the facility.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 1 375 penalty units; or
- (b) an individual, a fine not exceeding 275 penalty units.

Victimisation

70. (1) An employer (whether the operator or another person) must not –

- (a) dismiss an employee; or
- (b) perform an act that results in injury to an employee in his or her employment; or
- (c) perform an act that prejudicially alters the employee's position (whether by deducting or withholding remuneration or by any other means); or
- (d) threaten to do any of those things –

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 giving information or otherwise, the conduct of an inspection; or
- (g) has ceased, or proposes to cease, to perform work, in accordance with a direction by a health and safety representative under clause 41(1)(b) or clause 41(3)(c), and the cessation or proposed cessation does not continue after –
 - (i) the health and safety representative has agreed with a person supervising the work that

the cessation or proposed cessation
was not, or is no longer, necessary;
or

- (ii) an OHS inspector has, under
clause 41(5), made a decision that
has the effect that the employee
should perform the work.

Penalty: In the case of –

- (a) a body corporate, a fine not
exceeding 1 375 penalty units; or
- (b) an individual, a fine not exceeding
275 penalty units.

(2) In proceedings for an offence against
subclause (1), if all the relevant facts and
circumstances, other than the reason for an action
alleged in the charge, are proved, the defendant has
the onus of establishing that the action was not
taken for that reason.

Institution of prosecutions

71. (1) Proceedings for an offence against a listed
OHS law may be instituted by the Safety Authority
or by an OHS inspector.

(2) A health and safety representative for a
designated work group may request the Safety
Authority to institute proceedings for an offence
against a listed OHS law in relation to the
occurrence of an act or omission if –

- (a) a period of 6 months has elapsed since
the act or omission occurred; and

- (b) the health and safety representative considers that the occurrence of the act or omission constitutes an offence against a listed OHS law; and
- (c) proceedings in respect of the offence have not been instituted.

(3) A workforce representative in relation to a designated work group may request the Safety Authority to institute proceedings for an offence against a listed OHS law in relation to the occurrence of an act or omission if –

- (a) a period of 6 months has elapsed since the act or omission occurred; and
- (b) the workforce representative considers that the occurrence of the act or omission constitutes an offence against a listed OHS law; and
- (c) proceedings in respect of the offence have not been instituted; and
- (d) a group member included in the group requests the workforce representative to request the Safety Authority to institute the proceedings.

(4) A request under subclause (2) or (3) must be in writing.

(5) The Safety Authority must, within 3 months after receiving the request, advise the health and safety representative or the workforce representative, as the case may be, whether proceedings under subclause (1) have been or will be instituted, and, if not, give reasons why not.

Role of Commonwealth DPP

72. The Commonwealth Director of Public Prosecutions has the same functions and powers in respect of an offence against a listed OHS law as he or she would have if that offence were an offence against a law of the Commonwealth, including the power to institute and carry on an appeal arising out of a prosecution for that offence.

Conduct of directors, employees and agents

73. (1) This clause has effect for the purposes of a proceeding for an offence against a listed OHS law.

(2) If 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, employee or agent of the body corporate within the scope of actual or apparent authority; and
- (b)** that the director, employee or agent had the state of mind.

(3) Any conduct engaged in on behalf of a body corporate by a director, employee or agent of the body corporate within the scope of actual or apparent authority is taken to have been engaged in also by the body corporate unless it establishes that it took reasonable precautions and exercised due diligence to avoid the conduct.

(4) If it is necessary to establish the state of mind of a natural person in relation to particular conduct, it is sufficient to show –

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

(5) Any conduct engaged in on behalf of a natural person by an employee or agent of the natural person within the scope of actual or apparent authority is taken to have been engaged in also by the natural person unless the natural person establishes that he or she took reasonable precautions and exercised due diligence to avoid the conduct.

(6) If –

- (a) a natural person is convicted of an offence; and
- (b) he or she would not have been convicted of the offence if subclauses (4) and (5) had not been enacted –

he or she is not liable to be punished by imprisonment for that offence.

(7) A reference in subclause (2) or (4) to the state of mind of a person includes a reference to –

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

Act not to give rise to other liabilities, &c.

74. This Schedule does not –

- (a) confer a right of action in any civil proceeding in respect of any contravention of a provision of a listed OHS law; or
- (b) confer a defence to an action in any civil proceeding or otherwise affect a right of action in any civil proceeding.

Circumstances preventing compliance may be defence to prosecution

75. It is a defence to a prosecution for refusing or failing to do anything required by a listed OHS law if the defendant proves that it was not practicable to do it because of an emergency prevailing at the relevant time.

Regulations – general

76. (1) The regulations may prescribe –

- (a) procedures for the selection of persons, under clause 38, as members of health and safety committees, to represent the interests of members of the workforce at a facility; and
- (b) procedures to be followed at meetings of health and safety committees; and

- (c) the manner in which notices are to be served under this Schedule or the regulations; and
- (d) forms for the purposes of this Schedule or the regulations.

(2) If the Minister is satisfied that –

- (a) a power, function or duty is conferred or imposed on a person under a law of this State or the Commonwealth; and
- (b) the proper exercise of the power or performance of the function or duty is or would be prevented by this Schedule or a provision of this Schedule –

regulations made for the purposes of this subclause may declare that this Schedule, or the provision, as the case may be, does not apply to that person, or does not apply to that person in the circumstances specified in the regulations.

(3) Regulations made for the purposes of subclause (2) do not remain in force for longer than 5 years after they commence, but this subclause does not prevent the making of further regulations of the same substance.

(4) In subclause (2) –

“this Schedule” includes regulations made for the purposes of this Schedule.