

Authorised Version No. 018
Occupational Health and Safety Act 2004

No. 107 of 2004

Authorised Version incorporating amendments as at
16 January 2012

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The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1 Purposes

The main purposes of this Act are—

- (a) to create a legislative framework to give effect to the objects of this Act; and
- (b) to repeal the **Occupational Health and Safety Act 1985**; and
- (c) to provide for matters of a transitional nature and make consequential amendments.

2 Objects

(1) The objects of this Act are—

- (a) to secure the health, safety and welfare of employees and other persons at work; and
- (b) to eliminate, at the source, risks to the health, safety or welfare of employees and other persons at work; and
- (c) to ensure that the health and safety of members of the public is not placed at risk by the conduct of undertakings by employers and self-employed persons; and
- (d) to provide for the involvement of employees, employers, and organisations representing those persons, in the formulation and

implementation of health, safety and welfare standards—

having regard to the principles of health and safety protection set out in section 4.

- (2) It is the intention of the Parliament that in the administration of this Act regard should be had to the principles of health and safety protection set out in section 4.

3 Commencement

- (1) Subject to this section, this Act comes into operation on 1 July 2005.
- (2) Section 28 comes into operation on 1 July 2006.
- (3) Division 6 of Part 2 and section 172(2) come into operation on the day after the day on which this Act receives the Royal Assent.
- (4) Part 4 comes into operation on a day to be proclaimed but if it has not come into operation before 1 January 2006, it comes into operation on that day.

4 The principles of health and safety protection

- (1) The importance of health and safety requires that employees, other persons at work and members of the public be given the highest level of protection against risks to their health and safety that is reasonably practicable in the circumstances.
- (2) Persons who control or manage matters that give rise or may give rise to risks to health or safety are responsible for eliminating or reducing those risks so far as is reasonably practicable.
- (3) Employers and self-employed persons should be proactive, and take all reasonably practicable measures, to ensure health and safety at workplaces and in the conduct of undertakings.

- (4) Employers and employees should exchange information and ideas about risks to health and safety and measures that can be taken to eliminate or reduce those risks.
- (5) Employees are entitled, and should be encouraged, to be represented in relation to health and safety issues.

5 Definitions

- (1) In this Act—

authorised representative of a registered employee organisation means a person who holds an entry permit issued under Part 8;

Authority means the Victorian WorkCover Authority established by section 18 of the **Accident Compensation Act 1985**;

commission in relation to plant includes performing necessary adjustments, tests and inspections before the plant starts or re-starts operations;

compliance code means a compliance code approved by the Minister under Part 12;

contribution means a contribution the amount of which is determined in accordance with section 151A(2);

S. 5(1) def. of *contribution* inserted by No. 28/2005 s. 28.

corresponding Authority means a Government department or a statutory authority of the Commonwealth Government, or of the Government of another State or of a Territory, that is responsible for administering a law corresponding to this Act, the **Dangerous Goods Act 1985** or the **Equipment (Public Safety) Act 1994**;

S. 5(1) def of *corresponding Authority* amended by No. 66/2008 s. 32(1).

designated work group means a group of employees established under Division 1 or 2 of Part 7;

disclose in relation to information includes divulge or communicate to any person or publish;

eligible person in relation to a reviewable decision has the meaning given by section 127;

employee means a person employed under a contract of employment or contract of training (see also subsection (2));

employer means a person who employs one or more other persons under contracts of employment or contracts of training;

entry permit means an entry permit issued under Part 8;

exit date has the same meaning as it has in section 164 of the **Accident Compensation Act 1985**;

health includes psychological health;

health and safety committee, other than in section 72, means a health and safety committee whether or not required by this Act to be established;

health and safety representative means a health and safety representative for a designated work group who has been elected and holds office in accordance with Part 7;

inspector means an inspector appointed under Part 9;

S. 5(1) def. of
exit date
inserted by
No. 28/2005
s. 28.

interest at the prescribed rate means interest at the rate fixed for the time being under section 2 of the **Penalty Interest Rates Act 1983**;

S. 5(1) def. of *interest at the prescribed rate* inserted by No. 28/2005 s. 28.

non-WorkCover employer has the same meaning as it has in section 164 of the **Accident Compensation Act 1985**;

S. 5(1) def. of *non-WorkCover employer* inserted by No. 28/2005 s. 28.

Occupational Health and Safety Advisory Committee means the Committee established under Division 6 of Part 2;

officer of a body corporate, unincorporated body or association or partnership has the meaning (other than in Part 8) given by section 9 of the Corporations Act;

person includes a body corporate, unincorporated body or association and a partnership;

place includes a car, truck, ship, boat, airplane and any other vehicle;

plant includes—

- (a) any machinery, equipment, appliance, implement and tool; and
- (b) any component of any of those things; and
- (c) anything fitted, connected or related to any of those things;

rateable remuneration has the same meaning as it has in section 3(1) of the **Accident Compensation (WorkCover Insurance) Act 1993**;

S. 5(1) def. of *rateable remuneration* inserted by No. 28/2005 s. 28.

S. 5(1) def. of
self-insurer
inserted by
No. 28/2005
s. 28.

registered employee organisation has the meaning given by section 79;

reviewable decision has the meaning given by section 127;

self-employed person means a person, other than an employer, who works for gain or reward otherwise than under a contract of employment or training;

self-insurer has the same meaning as it has in section 5(1) of the **Accident Compensation Act 1985**;

substance means any natural or artificial substance, whether in the form of a solid, liquid, gas or vapour;

supply includes supply and resupply by way of sale, exchange, lease, hire or hire-purchase, whether as principal or agent;

Tribunal means the Victorian Civil and Administrative Tribunal established by the **Victorian Civil and Administrative Tribunal Act 1998**;

volunteer means a person who is acting on a voluntary basis (irrespective of whether the person receives out-of-pocket expenses);

workplace means a place, whether or not in a building or structure, where employees or self-employed persons work.

- (2) For the purposes of this Act and the regulations—
- (a) a member of the police force or member of the Retired Police Reserve of Victoria is to be taken to be employed by the Crown under a contract of service; and

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- (b) despite any contrary rule of law, the contract of service and the relationship of employer and employee is to be taken to exist between the Crown and each of those members in respect of the performance of the duties and exercise of the powers as such a member (whether arising at common law, under statute, by the instructions of superiors or otherwise).

6 Act binds the Crown

- (1) This Act binds the Crown—
- (a) in right of the State of Victoria; and
 - (b) to the extent that the legislative power of the Parliament permits, in all its other capacities.
- (2) To avoid doubt, the Crown is a body corporate for the purposes of this Act and the regulations.
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PART 2—THE AUTHORITY

Division 1—General functions and powers

7 Functions of the Authority

- (1) The Authority has the following functions—
- (a) to enquire into and report to the Minister on any matters referred to the Authority by the Minister (within the time specified by the Minister);
 - (b) to make recommendations to the Minister with respect to—
 - (i) the operation and administration of this Act and the regulations; and
 - (ii) regulations or compliance codes that the Minister or the Authority proposes should be made or approved under this Act; and
 - (iii) the establishment of public inquiries (if appropriate) into any matter relating to occupational health, safety and welfare;
 - (c) to monitor and enforce compliance with this Act and the regulations;
 - (d) to administer, examine, review and make recommendations concerning existing or proposed registration or licensing schemes relating to occupational health, safety and welfare;
 - (e) to co-operate with, and give advice and information to the following persons in relation to occupational health, safety and welfare—
 - (i) corresponding Authorities;

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- (ii) registered employee organisations (within the meaning of Part 8) and other organisations representing employers or employees;
 - (iii) other interested persons;
 - (f) to disseminate information about the duties, obligations and rights of persons under this Act or the regulations and to formulate standards, specifications or other forms of guidance for the purpose of assisting persons to comply with their duties and obligations;
 - (g) to promote education and training by—
 - (i) devising, in co-operation with educational and other bodies, courses in occupational health, safety and welfare; and
 - (ii) approving courses in occupational health, safety and welfare (whether or not devised in co-operation with another body); and
 - (iii) facilitating access to those courses; and
 - (iv) initiating or promoting events such as conferences and forums, and the publication of information, relating to occupational health, safety and welfare;
 - (h) to foster a co-operative, consultative relationship between employers and their employees in relation to the health, safety and welfare of those employees;
 - (i) to engage in, promote and co-ordinate the sharing of information to achieve the objects of this Act;

- (j) to promote public awareness and discussion of occupational health, safety and welfare issues and an understanding and acceptance of the principles of health and safety protection set out in section 4;
- (k) to develop and implement programs to provide incentives for employers—
 - (i) to implement measures to eliminate or reduce risks to health or safety; and
 - (ii) to otherwise improve occupational health, safety and welfare;
- (l) to monitor the operation of measures taken and arrangements put in place to ensure occupational health, safety and welfare;
- (m) to initiate and encourage research to identify efficient and effective strategies for improving occupational health, safety and welfare;
- (n) to collect and publish statistics relating to occupational health, safety and welfare.

Note

The **Accident Compensation Act 1985** also confers functions on the Authority relating to occupational health, safety and welfare.

- (2) The Authority also has such other functions as are conferred on it by or under this Act.
- (3) Before the Authority makes a recommendation to the Minister under subsection (1)(b)(ii) concerning a proposed compliance code, it must issue the proposed compliance code for public review and comment.
- (4) However, the Authority need not comply with subsection (3) if the Minister considers that it is in the public interest that the proposed compliance code be made as soon as practicable.

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- (5) The Authority must ensure, as far as possible, that information it gives is in a form and in such languages as is appropriate for the persons to whom it is directed.

8 Powers of the Authority

- (1) Subject to this Act, the Authority has the power to do all things necessary or convenient to be done for or in connection with the performance of its functions.
- (2) Without limiting subsection (1), the Authority has all the functions and powers that an inspector has under this Act or the regulations.
- (3) Without limiting subsection (1), the Authority has the following powers—
- (a) the power to enter into agreements or contracts with a corresponding Authority for or with respect to the following—
 - (i) the Authority performing the functions or exercising the powers of the corresponding Authority as its agent;
 - (ii) the Authority performing works or providing services for the corresponding Authority;
 - (iii) the Authority giving information to the corresponding Authority;
 - (iv) the Authority providing the corresponding Authority with the use of its facilities or the services of its staff;
 - (v) the corresponding Authority doing any of the things in subparagraphs (i) to (iv) for or in respect of the Authority;

- (b) in addition to, but not limited by, any other power under this section, the power to provide related and ancillary services.

Note

For *corresponding Authority*, see section 5.

Division 2—Power to obtain information

9 Power to obtain information

- (1) For the purpose of ascertaining whether this Act or the regulations have been complied with or of investigating a suspected contravention, the Authority may (by written notice) require a person to—
- (a) give the Authority such information as the Authority requires; or
- (b) produce a document in the custody or control of the person.
- (2) A person must not, without reasonable excuse, refuse or fail to comply with a requirement under subsection (1).

Penalty: 60 penalty units for a natural person;
300 penalty units for a body corporate.

- (3) A notice under subsection (1) directed to a natural person must inform the person that he or she may refuse or fail to give any information if giving the information would tend to incriminate him or her.

Note

Under section 153, it is an offence for a person to give information in complying or purportedly complying with this Act that the person knows to be false or misleading in a material particular.

10 Restrictions on disclosure of information

- (1) This section applies to a person who is or has been—
 - (a) a member of the Authority's Board of Management; or
 - (b) appointed for the purposes of this Act; or
 - (c) engaged as a member of the Authority's staff; or
 - (d) authorised to perform a function or exercise a power of, or on behalf of, the Authority.
- (2) Subject to section 11, a person to whom this section applies must not, except to the extent necessary to perform official duties or to perform a function or exercise a power of, or on behalf of, the Authority—
 - (a) directly or indirectly make a record of or disclose to any other person any information acquired by the person because he or she is or has been a person to whom this section applies; or
 - (b) make use of any such information for any purpose other than—
 - (i) the performance of official duties; or
 - (ii) the performance of a function or exercise of a power of, or on behalf of, the Authority.

Penalty: 100 penalty units.

11 Circumstances in which information may be disclosed

- (1) Nothing in section 10 precludes a person from doing any of the following—
- (a) producing a document to a court in the course of criminal proceedings;
 - (b) producing a document to a court or the Tribunal in the course of proceedings under this Act or the regulations;
 - (c) disclosing to a court in the course of criminal proceedings, or to a court or the Tribunal in the course of proceedings under this Act or the regulations, any matter or thing arising under this Act or the regulations or coming to the notice of the person—
 - (i) in the performance of official duties; or
 - (ii) in the performance of a function or exercise of a power of, or on behalf of, the Authority;
 - (d) producing a document or disclosing information with respect to a matter or thing arising under this Act or the regulations to any of the following—
 - (i) the Secretary to the Department of Treasury and Finance;
 - (ii) a corresponding Authority;
 - (iii) an authority, department or public body, within the meaning of the **Financial Management Act 1994**, that has functions in relation to particular occupational health and safety matters arising under this or another Act;
 - (iv) a committee of the Parliament;

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- (v) a person or body approved (in writing) by the Governor in Council for the purposes of this section;
 - (e) producing a document or disclosing information that is required or permitted by or under this or another Act to be produced or disclosed (as the case may be).

Note

For *corresponding Authority*, see section 5.

- (2) The Minister must cause a report of requests for the approval of persons or bodies by the Governor in Council under subsection (1)(d)(v) to be laid before each House of the Parliament within 14 sitting days of that House after 30 June in each year.
- (3) The report must include the following matters in respect of each request—
 - (a) the name of the person sought to be approved;
 - (b) the reason for the request;
 - (c) the date of the request;
 - (d) whether the request was approved or refused.

Division 3—Power to make guidelines

12 Power to make guidelines

- (1) The Authority may, in accordance with this Division, make guidelines on the way in which—
 - (a) a provision of this Act or of a regulation made under this Act would, in the Authority's opinion, apply to a class of persons or to a set of circumstances; or
 - (b) a discretion of the Authority under a provision of, or regulation made under, this Act would be exercised.

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- (2) For the purposes of this section, the Authority exercises a discretion if the Authority—
- (a) forms an opinion; or
 - (b) attains a state of mind; or
 - (c) makes a determination; or
 - (d) exercises a power; or
 - (e) refuses or fails to do any of those things.

13 How guidelines are made

- (1) If the Authority proposes to make guidelines, it must—
- (a) ensure notice of the proposed guidelines is published in the Government Gazette and a newspaper circulating generally throughout the State; and
 - (b) include in the notice a statement that written submissions or comments on the proposed guidelines may be made to the Authority within a specified period; and
 - (c) give a copy of the proposed guidelines to each person who requests it during that period.
- (2) After considering the submissions and comments (if any) received by the Authority within the specified period, the Authority may make the guidelines (with or without modifications) by causing notice of them to be published in the Government Gazette.
- (3) If the Authority makes guidelines, it must ensure notice of them is also published in a newspaper circulating generally throughout the State.

14 Withdrawal of guidelines

- (1) The Authority may withdraw guidelines by causing notice of the withdrawal to be published in the Government Gazette.
- (2) The notice must also be published in a newspaper circulating generally throughout the State.

15 Guidelines do not affect rights and duties etc.

Guidelines under this Division do not give rise to—

- (a) any liability of, or other claim against, the Authority; or
- (b) any right, expectation, duty or obligation that would not otherwise be conferred or imposed on a person; or
- (c) any defence that would not otherwise be available to that person.

Division 4—Power to accept undertakings relating to contraventions

16 Authority may accept undertakings

- (1) The Authority may accept (by written notice) a written undertaking given by a person in connection with a matter relating to a contravention or alleged contravention by the person of this Act or the regulations.
- (2) The person may withdraw or vary the undertaking at any time but only with the Authority's written consent.
- (3) Neither the Authority nor an inspector may bring a proceeding for an offence against this Act or the regulations constituted by the contravention or alleged contravention to which the undertaking relates.

17 Enforcement of undertakings

- (1) If the Authority considers that a person has contravened an undertaking accepted by the Authority, the Authority may apply to the Magistrates' Court for enforcement of the undertaking.
- (2) If the Magistrates' Court is satisfied that the person has contravened the undertaking, it may make—
 - (a) an order that the person must comply with the undertaking or take specified action to comply with the undertaking; or
 - (b) any other order that it considers appropriate.

Division 5—Power to give advice on compliance

18 Power to give advice on compliance

- (1) The Authority may give advice to a person who has a duty or obligation under this Act or the regulations about complying with that duty or obligation.
- (2) The giving of such advice by the Authority does not give rise to—
 - (a) any liability of, or other claim against, the Authority; or
 - (b) any right, expectation, duty or obligation that would not otherwise be conferred or imposed on the person given the advice; or
 - (c) any defence that would not otherwise be available to that person.

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- (3) The Authority's power under this section to give advice may also be exercised by an inspector or, if the Authority authorises any other person to exercise the power, that other person.

Note

An inspector or other person exercising this power may not be liable for things done or omitted to be done in good faith (see section 22(5) of the **Accident Compensation Act 1985**).

Division 6—Occupational Health and Safety Advisory Committee

19 Occupational Health and Safety Advisory Committee

- (1) There is to be an Occupational Health and Safety Advisory Committee.
- (2) The Chairperson of the Authority's Board of Management, or such other member of the Board as the Chairperson nominates, is to be the Chairperson of the Occupational Health and Safety Advisory Committee.
- (3) The Occupational Health and Safety Advisory Committee is to consist of the Chairperson and the following members appointed (in writing) by the Minister from time to time—
- (a) 2 persons recommended by the Authority's Board of Management who represent the interests of the Authority;
 - (b) 2 persons who the Minister considers represent the interests of the Crown;
 - (c) 6 persons who the Minister considers represent the interests of employers (at least 2 of whom the Minister considers represent the interests of employers engaged in small business);

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- (d) 6 persons who the Minister considers represent the interests of employees;
 - (e) 2 independent persons who the Minister considers have appropriate expertise and experience in occupational health and safety.
- (4) The functions of the Occupational Health and Safety Advisory Committee are—
- (a) to enquire into and report to the Authority's Board of Management on any matters referred to it by the Board in accordance with the terms of reference given by the Board; and
 - (b) to advise the Board in relation to—
 - (i) promoting healthy and safe working environments; and
 - (ii) the operation and administration of this Act and the regulations; and
 - (c) to carry out such other functions as are conferred by this Act.
- (5) The Occupational Health and Safety Advisory Committee must operate in accordance with the procedures (if any) determined by the Authority's Board of Management.
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PART 3—GENERAL DUTIES RELATING TO HEALTH AND SAFETY

Division 1—The concept of ensuring health and safety

20 The concept of ensuring health and safety

- (1) To avoid doubt, a duty imposed on a person by this Part or the regulations to ensure, so far as is reasonably practicable, health and safety requires the person—
 - (a) to eliminate risks to health and safety so far as is reasonably practicable; and
 - (b) if it is not reasonably practicable to eliminate risks to health and safety, to reduce those risks so far as is reasonably practicable.
- (2) To avoid doubt, for the purposes of this Part and the regulations, regard must be had to the following matters in determining what is (or was at a particular time) reasonably practicable in relation to ensuring health and safety—
 - (a) the likelihood of the hazard or risk concerned eventuating;
 - (b) the degree of harm that would result if the hazard or risk eventuated;
 - (c) what the person concerned knows, or ought reasonably to know, about the hazard or risk and any ways of eliminating or reducing the hazard or risk;
 - (d) the availability and suitability of ways to eliminate or reduce the hazard or risk;

- (e) the cost of eliminating or reducing the hazard or risk.

Division 2—Main duties of employers

21 Duties of employers to employees

- (1) An employer must, so far as is reasonably practicable, provide and maintain for employees of the employer a working environment that is safe and without risks to health.

Penalty: 1800 penalty units for a natural person;
9000 penalty units for a body corporate.

- (2) Without limiting subsection (1), an employer contravenes that subsection if the employer fails to do any of the following—
- (a) provide or maintain plant or systems of work that are, so far as is reasonably practicable, safe and without risks to health;
 - (b) make arrangements for ensuring, so far as is reasonably practicable, safety and the absence of risks to health in connection with the use, handling, storage or transport of plant or substances;
 - (c) maintain, so far as is reasonably practicable, each workplace under the employer's management and control in a condition that is safe and without risks to health;
 - (d) provide, so far as is reasonably practicable, adequate facilities for the welfare of employees at any workplace under the management and control of the employer;

- (e) provide such information, instruction, training or supervision to employees of the employer as is necessary to enable those persons to perform their work in a way that is safe and without risks to health.
- (3) For the purposes of subsections (1) and (2)—
 - (a) a reference to an employee includes a reference to an independent contractor engaged by an employer and any employees of the independent contractor; and
 - (b) the duties of an employer under those subsections extend to an independent contractor engaged by the employer, and any employees of the independent contractor, in relation to matters over which the employer has control or would have control if not for any agreement purporting to limit or remove that control.
- (4) An offence against subsection (1) is an indictable offence.

Note

However, the offence may be heard and determined summarily (see section 28 of the **Criminal Procedure Act 2009**).

Note to s. 21(4) amended by No. 68/2009 s. 97(Sch. item 90.1).

22 Duties of employers to monitor health and conditions etc.

- (1) An employer must, so far as is reasonably practicable—
 - (a) monitor the health of employees of the employer; and
 - (b) monitor conditions at any workplace under the employer's management and control; and

- (c) provide information to employees of the employer (in such other languages as appropriate) concerning health and safety at the workplace, including the names of persons to whom an employee may make an enquiry or complaint about health and safety.

Penalty: 240 penalty units for a natural person;
1200 penalty units for a body corporate.

- (2) An employer must, so far as is reasonably practicable—

- (a) keep information and records relating to the health and safety of employees of the employer; and
- (b) employ or engage persons who are suitably qualified in relation to occupational health and safety to provide advice to the employer concerning the health and safety of employees of the employer.

Penalty: 60 penalty units for a natural person;
300 penalty units for a body corporate.

23 Duties of employers to other persons

- (1) An employer must ensure, so far as is reasonably practicable, that persons other than employees of the employer are not exposed to risks to their health or safety arising from the conduct of the undertaking of the employer.

Penalty: 1800 penalty units for a natural person;
9000 penalty units for a body corporate.

- (2) An offence against subsection (1) is an indictable offence.

Note

However, the offence may be heard and determined summarily (see section 28 of the **Criminal Procedure Act 2009**).

Note to s. 23(2) amended by No. 68/2009 s. 97(Sch. item 90.2).

Division 3—Duties of self-employed persons

24 Duties of self-employed persons to other persons

- (1) A self-employed person must ensure, so far as is reasonably practicable, that persons are not exposed to risks to their health or safety arising from the conduct of the undertaking of the self-employed person.

Penalty: 1800 penalty units.

- (2) An offence against subsection (1) is an indictable offence.

Note

However, the offence may be heard and determined summarily (see section 28 of the **Criminal Procedure Act 2009**).

Note to s. 24(2) amended by No. 68/2009 s. 97(Sch. item 90.3).

Division 4—Duties of employees

25 Duties of employees

- (1) While at work, an employee must—
- (a) take reasonable care for his or her own health and safety; and
 - (b) take reasonable care for the health and safety of persons who may be affected by the employee's acts or omissions at a workplace; and

- (c) co-operate with his or her employer with respect to any action taken by the employer to comply with a requirement imposed by or under this Act or the regulations.

Penalty: 1800 penalty units.

- (2) While at work, an employee must not intentionally or recklessly interfere with or misuse anything provided at the workplace in the interests of health, safety or welfare.

Penalty: 1800 penalty units.

- (3) In determining for the purposes of subsection (1)(a) or (b) whether an employee failed to take reasonable care, regard must be had to what the employee knew about the relevant circumstances.

- (4) An offence against subsection (1) or (2) is an indictable offence.

Note

However, the offence may be heard and determined summarily (see section 28 of the **Criminal Procedure Act 2009**).

Note to s. 25(4) amended by No. 68/2009 s. 97(Sch. item 90.4).

Division 5—Duties of other persons

26 Duties of persons who manage or control workplaces

- (1) A person who (whether as an owner or otherwise) has, to any extent, the management or control of a workplace must ensure so far as is reasonably practicable that the workplace and the means of entering and leaving it are safe and without risks to health.

Penalty: 1800 penalty units for a natural person;
9000 penalty units for a body corporate.

- (2) The duties of a person under subsection (1) apply only in relation to matters over which the person has management or control.

- (3) An offence against subsection (1) is an indictable offence.

Note

However, the offence may be heard and determined summarily (see section 28 of the **Criminal Procedure Act 2009**).

Note to s. 26(3) amended by No. 68/2009 s. 97(Sch. item 90.5).

27 Duties of designers of plant

- (1) A person who designs plant who knows, or ought reasonably to know, that the plant is to be used at a workplace must—
- (a) ensure, so far as is reasonably practicable, that it is designed to be safe and without risks to health if it is used for a purpose for which it was designed; and
 - (b) carry out, or arrange the carrying out, of such testing and examination as may be necessary for the performance of the duty imposed by paragraph (a); and
 - (c) give adequate information to each person to whom the designer gives the design and who is to give effect to it concerning—
 - (i) the purpose or purposes for which the plant was designed; and
 - (ii) the results of any testing or examination referred to in paragraph (b); and
 - (iii) any conditions necessary to ensure that the plant is safe and without risks to health if it is used for a purpose for which it was designed; and
 - (d) on request, give such information to a person who uses or is to use the plant.

Penalty: 1800 penalty units for a natural person;
9000 penalty units for a body corporate.

- (2) An offence against subsection (1) is an indictable offence.

Note to
s. 27(2)
amended by
No. 68/2009
s. 97(Sch.
item 90.6).

Note

However, the offence may be heard and determined summarily (see section 28 of the **Criminal Procedure Act 2009**).

28 Duties of designers of buildings or structures

- (1) A person who designs a building or structure or part of a building or structure who knows, or ought reasonably to know, that the building or structure or the part of the building or structure is to be used as a workplace must ensure, so far as is reasonably practicable, that it is designed to be safe and without risks to the health of persons using it as a workplace for a purpose for which it was designed.

Penalty: 500 penalty units for a natural person;
2500 penalty units for a body corporate.

- (2) An offence against subsection (1) is an indictable offence.

Note to
s. 28(2)
amended by
No. 68/2009
s. 97(Sch.
item 90.7).

Note

However, the offence may be heard and determined summarily (see section 28 of the **Criminal Procedure Act 2009**).

29 Duties of manufacturers of plant or substances

- (1) A person who manufactures plant or a substance who knows, or ought reasonably to know, that the plant or substance is to be used at a workplace must—
- (a) ensure, so far as is reasonably practicable, that it is manufactured to be safe and without risks to health if it is used for a purpose for which it was manufactured; and

- (b) carry out, or arrange the carrying out, of such testing and examination as may be necessary for the performance of the duty imposed by paragraph (a); and
- (c) give adequate information to each person to whom the manufacturer provides the plant or substance concerning—
 - (i) the purpose or purposes for which the plant or substance was manufactured; and
 - (ii) the results of any testing or examination referred to in paragraph (b); and
 - (iii) any conditions necessary to ensure that the plant or substance is safe and without risks to health if it is used for a purpose for which it was manufactured; and
- (d) on request, give such information to a person who uses or is to use the plant or substance.

Penalty: 1800 penalty units for a natural person;
9000 penalty units for a body corporate.

- (2) An offence against subsection (1) is an indictable offence.

Note

However, the offence may be heard and determined summarily (see section 28 of the **Criminal Procedure Act 2009**).

Note to s. 29(2) amended by No. 68/2009 s. 97(Sch. item 90.8).

30 Duties of suppliers of plant or substances

- (1) A person who supplies plant or a substance who knows, or ought reasonably to know, that the plant or substance is to be used at a workplace (whether by the person to whom it is supplied or anyone else) must—
- (a) ensure, so far as is reasonably practicable, that it is safe and without risks to health if it is used for a purpose for which it was designed, manufactured or supplied; and
 - (b) give adequate information to each person to whom the supplier supplies the plant or substance concerning—
 - (i) the purpose or purposes for which the plant or substance was designed, manufactured or supplied; and
 - (ii) any conditions necessary to ensure that the plant or substance is safe and without risks to health if it is used for a purpose for which it was designed, manufactured or supplied; and
 - (c) on request, give such information to a person who uses or is to use the plant or substance.
- Penalty: 1800 penalty units for a natural person;
9000 penalty units for a body corporate.
- (2) For the purposes of subsection (1), if the person who supplies the plant or substance—
- (a) carries on the business of financing the acquisition of plant or a substance by customers; and

- (b) has, in the course of that business, acquired an interest in the plant or substance solely for the purpose of financing its acquisition by a customer from a third person or its provision to a customer by a third person; and
- (c) has not taken possession of the plant or substance or has taken possession of it solely for the purpose of passing possession to that customer—

the reference in subsection (1) to the person who supplies that plant or substance is instead taken to be a reference to the third person.

- (3) An offence against subsection (1) is an indictable offence.

Note

However, the offence may be heard and determined summarily (see section 28 of the **Criminal Procedure Act 2009**).

Note to s. 30(3) amended by No. 68/2009 s. 97(Sch. item 90.9).

31 Duties of persons installing, erecting or commissioning plant

- (1) A person who installs, erects or commissions plant who knows, or ought reasonably to know, that the plant is to be used at a workplace must ensure, so far as is reasonably practicable, that nothing about the way in which the plant is installed, erected or commissioned makes its use unsafe or a risk to health.

Penalty: 1800 penalty units for a natural person;
9000 penalty units for a body corporate.

- (2) An offence against subsection (1) is an indictable offence.

Note to s. 31(2) amended by No. 68/2009 s. 97(Sch. item 90.10).

Note

However, the offence may be heard and determined summarily (see section 28 of the **Criminal Procedure Act 2009**).

32 Duty not to recklessly endanger persons at workplaces

A person who, without lawful excuse, recklessly engages in conduct that places or may place another person who is at a workplace in danger of serious injury is guilty of an indictable offence and liable to—

- (a) in the case of a natural person, a term of imprisonment not exceeding 5 years, or a fine not exceeding 1800 penalty units, or both; and
- (b) in the case of a body corporate, a fine not exceeding 9000 penalty units.

Note to s. 32 amended by No. 68/2009 s. 97(Sch. item 90.11).

Note

However, the offence may be heard and determined summarily (see section 28 of the **Criminal Procedure Act 2009**).

Division 6—Other matters

33 Single charge for multiple contraventions of certain duties

- (1) This section applies to—
- (a) a contravention of a provision of Division 2, 3, 4 or 5 by a person; and
 - (b) a contravention of such a provision for which an officer of a body corporate, partnership or unincorporated body or association (including a body corporate, partnership or

unincorporated body or association representing the Crown) is liable.

Note

For liability of officers, see Divisions 4 and 5 of Part 11.

- (2) Subject to any contrary court order, two or more contraventions may be charged as a single offence if they arise out of the same factual circumstances.
- (3) This section does not authorise contraventions of two or more provisions of Division 2, 3, 4 or 5 to be charged as a single offence.
- (4) If two or more contraventions are charged as a single offence, a single penalty only may be imposed in respect of the contraventions.

34 Civil liability not affected by this Part

Nothing in this Part is to be construed as—

- (a) conferring a right of action in civil proceedings in respect of a contravention of a provision of this Part; or
 - (b) conferring a defence to an action in civil proceedings or otherwise affecting a right of action in civil proceedings; or
 - (c) affecting the extent (if any) to which a right of action arises, or civil proceedings may be taken, with respect to breaches of duties or obligations imposed by the regulations.
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PART 4—DUTY OF EMPLOYERS TO CONSULT

35 Duty of employers to consult with employees

- (1) When doing any of the following things, an employer must so far as is reasonably practicable consult in accordance with this Part with the employees of the employer who are or are likely to be directly affected by the employer doing that thing—
- (a) identifying or assessing hazards or risks to health or safety at a workplace under the employer's management and control or arising from the conduct of the undertaking of the employer;
 - (b) making decisions about the measures to be taken to control risks to health or safety at a workplace under the employer's management and control or arising from the conduct of the undertaking of the employer;
 - (c) making decisions about the adequacy of facilities for the welfare of employees of the employer;
 - (d) making decisions about the procedures for any of the following—
 - (i) resolving health or safety issues at a workplace under the employer's management and control or arising from the conduct of the undertaking of the employer;
 - (ii) consulting with employees of the employer in accordance with this Part;
 - (iii) monitoring the health of employees of the employer and the conditions at any workplace under the employer's management and control;

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- (iv) providing information and training to employees of the employer;
 - (e) determining the membership of any health and safety committee;
 - (f) proposing changes, that may affect the health or safety of employees of the employer, to any of the following—
 - (i) a workplace under the employer's management and control;
 - (ii) the plant, substances or other things used at such a workplace;
 - (iii) the conduct of the work performed at such a workplace;
 - (g) any other thing prescribed by the regulations for the purposes of this subsection.
- (2) For the purposes of subsection (1)—
- (a) a reference to an employee of an employer includes a reference to an independent contractor engaged by the employer and any employees of the independent contractor; and
 - (b) the duties of an employer under that subsection extend to an independent contractor engaged by the employer, and any employees of the independent contractor, in relation to matters over which the employer has control or would have control if not for any agreement purporting to limit or remove that control.
- (3) An employer who contravenes subsection (1) is guilty of an offence and liable to a fine not exceeding—
- (a) in the case of a natural person, 180 penalty units; or

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- (b) in the case of a body corporate, 900 penalty units.

36 How employees are to be consulted

- (1) An employer who is required to consult with employees must do so by—
- (a) sharing with the employees information about the matter on which the employer is required to consult; and
 - (b) giving the employees a reasonable opportunity to express their views about the matter; and
 - (c) taking into account those views.
- (2) If the employees are represented by a health and safety representative, the consultation must involve that representative (with or without the involvement of the employees directly).
- (3) Subject to subsections (1) and (2), if the employer and the employees have agreed to procedures for undertaking consultations, the consultation must be undertaken in accordance with those procedures.
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PART 5—DUTIES RELATING TO INCIDENTS

37 Incidents to which this Part applies

- (1) This Part applies to an incident that results in—
- (a) the death of a person; or
 - (b) a person requiring medical treatment within 48 hours of exposure to a substance; or
 - (c) a person requiring immediate treatment as an in-patient in a hospital; or
 - (d) a person requiring immediate medical treatment for—
 - (i) the amputation of any part of his or her body; or
 - (ii) a serious head injury; or
 - (iii) a serious eye injury; or
 - (iv) the separation of his or her skin from an underlying tissue (such as de-gloving or scalping); or
 - (v) electric shock; or
 - (vi) a spinal injury; or
 - (vii) the loss of a bodily function; or
 - (viii) serious lacerations; or
 - (e) any other injury to a person or other consequence prescribed by the regulations.
- (2) This Part also applies to an incident that exposes a person in the immediate vicinity to an immediate risk to the person's health or safety through—
- (a) the collapse, overturning, failure or malfunction of, or damage to, any plant that the regulations prescribe must not be used unless the plant is licensed or registered; or

- (b) the collapse or failure of an excavation or of any shoring supporting an excavation; or
 - (c) the collapse or partial collapse of all or part of a building or structure; or
 - (d) an implosion, explosion or fire; or
 - (e) the escape, spillage or leakage of any substance including dangerous goods (within the meaning of the **Dangerous Goods Act 1985**); or
 - (f) the fall or release from a height of any plant, substance or object; or
 - (g) in relation to a mine—
 - (i) the overturning or collapse of any plant; or
 - (ii) the inrush of water, mud or gas; or
 - (iii) the interruption of the main system of ventilation; or
 - (h) any other event or circumstance prescribed by the regulations.
- (3) Despite subsections (1) and (2), this Part does not apply to an incident of a kind excluded by the regulations.
- (4) In this section—

medical treatment means treatment by a person registered under the Health Practitioner Regulation National Law to practise in the medical profession (other than as a student);

S. 37(4) def. of *medical treatment* amended by No. 97/2005 s. 182(Sch. 4 item 38), substituted by No. 13/2010 s. 51(Sch. item 39).

mine means—

- (a) a workplace at which work is being done under a mining licence granted under the **Mineral Resources (Sustainable Development) Act 1990**; or
- (b) a workplace at which exploration (within the meaning of that Act) in the form of—
 - (i) underground work of any kind; or
 - (ii) drilling from the surface for coal bed methane—

is being done under an exploration licence granted under that Act; or

- (c) in relation to a tourist mine (within the meaning of that Act), those parts of the mine that are underground and all infrastructure and plant associated with the underground workings of the mine.

S. 37(4) def. of *mine* amended by No. 63/2006 s. 61(Sch. item 26.1).

38 Duty to notify of incidents

- (1) An employer or self-employed person must notify the Authority immediately after becoming aware that an incident has occurred at a workplace under the management and control of the employer or self-employed person.
- (2) However, an employer or self-employed person is not required to notify the Authority if the employer or self-employed person is the only person injured or otherwise harmed, or exposed to risk, as described in section 37 by the incident.
- (3) Within 48 hours after being required to notify the Authority, the employer or self-employed person must also give the Authority a written record of the incident, in the form approved in writing by the Authority.

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- (4) The employer or self-employed person must keep a copy of the record for at least 5 years and make a copy of the record available for inspection by—
- (a) an inspector; or
 - (b) a person, or a representative of a person, injured in the incident or whose health or safety was exposed to immediate risk by the incident; or
 - (c) a representative of a person whose death was caused by the incident; or
 - (d) in the case only of an employer—
 - (i) if any of the employees of the employer are members of a designated work group, a health and safety representative for the designated work group; or
 - (ii) the members of each health and safety committee (if any) established by the employer.
- (5) An employer or self-employed person who contravenes subsection (1), (3) or (4) is guilty of an offence and liable to a fine not exceeding—
- (a) in the case of a natural person, 60 penalty units; or
 - (b) in the case of a body corporate, 300 penalty units.

39 Duty to preserve incident sites

- (1) An employer or self-employed person who is required to notify the Authority of an incident that has occurred at a workplace must ensure that the site where it occurred is not disturbed until—
- (a) an inspector arrives at the site; or

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- (b) such other time as an inspector directs when the Authority is notified of the incident.

Penalty: 60 penalty units for a natural person;
300 penalty units for a body corporate.

- (2) Despite subsection (1), a site may be disturbed for the purpose of—
- (a) protecting the health or safety of a person; or
 - (b) aiding an injured person involved in an incident; or
 - (c) taking essential action to make the site safe or to prevent a further occurrence of an incident.
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**PART 6—LICENCES, REGISTRATION, PERMITS AND
OTHER REQUIREMENTS**

40 Requirements for licence or registration

- (1) An employer or self-employed person must not conduct an undertaking at a workplace if—
- (a) the regulations require the workplace, or class of workplace, to be licensed or registered; and
 - (b) the workplace, or class of workplace, is not licensed or registered (as the case may be) in accordance with the regulations.

Penalty: 500 penalty units for a natural person;
2500 penalty units for a body corporate.

- (2) A person must not use plant at a workplace if—
- (a) the regulations require the plant or its design to be licensed or registered; and
 - (b) the plant or its design (as the case may be) is not licensed or registered (as the case may be) in accordance with the regulations.

Penalty: 100 penalty units for a natural person;
500 penalty units for a body corporate.

- (3) A person must not use a substance at a workplace if—
- (a) the regulations require the substance to be licensed or registered; and
 - (b) the substance is not licensed or registered (as the case may be) in accordance with the regulations.

Penalty: 100 penalty units for a natural person;
500 penalty units for a body corporate.

- (4) A person must not carry out work, or an activity, at a workplace if—
- (a) the regulations require the work or activity, or class of work or activity, to be carried out by a person who is registered or licensed; and
 - (b) the person is not registered or licensed (as the case may be) in accordance with the regulations.

Penalty: 100 penalty units for a natural person;
500 penalty units for a body corporate.

- (5) An offence against subsection (1) is an indictable offence.

Note

However, the offence may be heard and determined summarily (see section 28 of the **Criminal Procedure Act 2009**).

Note to s. 40(5) amended by No. 68/2009 s. 97(Sch. item 90.12).

41 Requirements for prescribed qualifications or experience

A person must not carry out work, or an activity, at a workplace if—

- (a) the regulations require the work or activity, or class of work or activity, to be carried out by, or under the supervision of, a person who has prescribed qualifications or experience; and
- (b) the person does not have the prescribed qualifications or experience or the work or activity is not carried out under the supervision of a person who has the prescribed qualifications or experience (as the case may be).

Penalty: 100 penalty units for a natural person;
500 penalty units for a body corporate.

42 Requirements for permit or certificate of competency

A person must not carry out work, or an activity, at a workplace if—

- (a) the regulations require the work or activity, or class of work or activity, to be carried out by a person who holds a permit or certificate of competency for that work or activity, or class of work or activity; and
- (b) the person does not hold a permit or certificate of competency (as the case may be) for that work or activity, or class of work or activity, in accordance with the regulations.

Penalty: 100 penalty units for a natural person;
500 penalty units for a body corporate.

PART 7—REPRESENTATION OF EMPLOYEES

Division 1—Grouping of employees

43 Establishment of designated work groups

- (1) An employee may ask his or her employer to establish designated work groups of employees of the employer at one or more workplaces.
- (2) The particulars of the designated work groups are to be determined by negotiation, in accordance with section 44, between the employer and employees.
- (3) The employer must do everything reasonable to ensure that negotiations start within 14 days after the request.

Penalty: 10 penalty units for a natural person;
50 penalty units for a body corporate.

- (4) An employer may initiate negotiations with employees of the employer to establish designated work groups.

44 Negotiation of agreement concerning designated work groups

- (1) Negotiations concerning designated work groups under this Division must be directed only at the following—
 - (a) the manner of grouping, into one or more designated work groups, employees at one or more workplaces that—
 - (i) best and most conveniently enables the interests of those employees relating to occupational health and safety to be represented and safeguarded; and

- (ii) best takes account of the need for a health and safety representative for the designated work group or groups to be accessible to each member of the group;
 - (b) the number (which must be at least one) of health and safety representatives for each designated work group;
 - (c) the number of deputy health and safety representatives (if any) for each designated work group;
 - (d) the term of office (not exceeding 3 years) of each health and safety representative and deputy health and safety representative (if any);
 - (e) whether the health and safety representative or representatives for the designated work group or groups are authorised also to represent independent contractors, or a class of independent contractors, engaged by the employer, and any employees of such independent contractors, who work at a workplace at which members of the designated work group or groups work.
- (2) If the negotiations result in agreement on the particulars mentioned in subsection (1), the employer must establish the designated work group or groups (as agreed) by giving written notice to the employees.
- Penalty: 10 penalty units for a natural person;
50 penalty units for a body corporate.
- (3) The parties to an agreement concerning a designated work group or groups may, at any time, negotiate a variation of the agreement.

- (4) If a variation is agreed, the employer must vary the agreement by giving written notice to the employees.

Penalty: 10 penalty units for a natural person;
50 penalty units for a body corporate.

- (5) In negotiations concerning a designated work group or groups (including negotiations for a variation of an agreement), an employee or a group of employees may be represented by any person authorised by the employee or group (as the case may be).
- (6) An agreement concerning a designated work group or groups must only deal with the particulars mentioned in subsection (1).

Note

Certain matters must be taken into account in negotiations for an agreement or a variation of an agreement (see section 46).

45 Determination by inspector of unresolved particulars

- (1) Any of the parties to a negotiation concerning a designated work group or groups (including a variation of an agreement) under this Division may, if agreement is not reached within a reasonable time, ask the Authority to arrange for an inspector to determine the particulars that are unresolved.
- (2) An inspector who determines unresolved particulars must give written notice of the determination to the parties and the parties must give effect to the determination.

46 Matters to be taken into account

The following matters must be taken into account in negotiations concerning a designated work group or groups (including negotiations for a variation of an agreement) under this Division or in determining unresolved particulars under section 45—

- (a) the number of employees at the workplace or workplaces;
- (b) the nature of each type of work performed at the workplace or workplaces;
- (c) the number and grouping of employees who perform the same or similar types of work or who work under the same or similar arrangements;
- (d) the areas at the workplace or workplaces where each type of work is performed;
- (e) the nature of any hazards at the workplace or workplaces;
- (f) any overtime or shift working arrangements at the workplace or workplaces;
- (g) whether other languages are spoken by the employees.

Division 2—Grouping of employees of multiple employers

47 Establishment of designated work groups of multiple employers

- (1) Designated work groups may be established of—
 - (a) employees of an employer at one or more workplaces; and
 - (b) employees of one or more other employers at one or more workplaces.

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- (2) The particulars of the designated work groups are to be determined by negotiation, in accordance with section 48, between each of the employers and the employees.
 - (3) The establishment of one or more designated work groups under this Division does not—
 - (a) prevent the establishment under this Division or Division 1 of any other designated work group of the employees concerned; or
 - (b) affect any designated work groups of those employees that have already been established under this Division or Division 1.

48 Negotiation of agreement for designated work groups of multiple employers

- (1) Negotiations concerning designated work groups under this Division must be directed only at the following—
 - (a) the manner of grouping, into one or more designated work groups, employees of the employers at one or more workplaces that—
 - (i) best and most conveniently enables the interests of those employees relating to occupational health and safety to be represented and safeguarded; and
 - (ii) best takes account of the need for a health and safety representative for the designated work group or groups to be accessible to each member of the group;
 - (b) the number (which must be at least one) of health and safety representatives for each designated work group;

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- (c) the number of deputy health and safety representatives (if any) for each designated work group;
- (d) the term of office (not exceeding 3 years) of each health and safety representative and deputy health and safety representative (if any);
- (e) whether the health and safety representative or representatives for the designated work group or groups are authorised also to represent independent contractors, or a class of independent contractors, engaged by any of the employers, and any employees of such independent contractors, who work at a workplace at which members of the designated work group or groups work.
- (2) If the negotiations result in a written agreement on the particulars mentioned in subsection (1), the employers must establish the designated work group or groups (as agreed) by giving written notice to the employees.

Penalty: 10 penalty units for a natural person;
50 penalty units for a body corporate.

- (3) The parties to an agreement concerning a designated work group or groups may, at any time, negotiate a variation of the agreement.
- (4) If a variation is agreed, the employers must vary the agreement by giving written notice to the employees.

Penalty: 10 penalty units for a natural person;
50 penalty units for a body corporate.

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- (5) In negotiations concerning a designated work group or groups (including negotiations for a variation of an agreement), an employee or a group of employees may be represented by any person authorised by the employee or group (as the case may be).
- (6) An agreement concerning a designated work group or groups must only deal with the particulars mentioned in subsection (1).

49 Matters to be taken into account

The following matters must be taken into account in negotiations concerning a designated work group or groups (including negotiations for a variation of an agreement) under this Division—

- (a) the number of employees at the workplace or workplaces;
- (b) the nature of each type of work performed at the workplace or workplaces;
- (c) the number and grouping of employees who perform the same or similar types of work or who work under the same or similar arrangements;
- (d) the areas at the workplace or workplaces where each type of work is performed;
- (e) the nature of any hazards at the workplace or workplaces;
- (f) any overtime or shift working arrangements at the workplace or workplaces;
- (g) whether other languages are spoken by the employees.

50 Guidelines for negotiations involving multiple employers

- (1) The Authority may publish guidelines about conducting negotiations concerning designated work groups (including negotiations for a variation of an agreement) under this Division.
- (2) The parties to such negotiations must have regard to the guidelines (if any) in conducting those negotiations.

51 Withdrawal from negotiations or agreement involving multiple employers

- (1) A party to a negotiation for an agreement, or to an agreement, concerning a designated work group under this Division may withdraw from the negotiation or agreement at any time by giving reasonable notice (in writing) to the other parties.
- (2) If a party withdraws from an agreement concerning a designated work group under this Division—
 - (a) the other parties must negotiate a variation to the agreement in accordance with section 48; and
 - (b) the withdrawal does not affect the validity of the agreement between the other parties in the meantime.

52 Effect of Division on other arrangements

To avoid doubt, nothing in this Division affects the capacity of two or more employers and their employees to enter into other agreements or make other arrangements, in addition to complying with this Part, concerning the representation of those employees.

Division 3—Prohibition on coercion relating to designated work groups

53 Prohibition on coercion

- (1) A person must not coerce or attempt to coerce another person—
 - (a) not to make, or to withdraw, a request under section 43; or
 - (b) in the conduct of negotiations concerning a designated work group or groups (including negotiations for a variation of an agreement) under Division 1 or 2; or
 - (c) in relation to the other person being represented in such negotiations.

Penalty: 60 penalty units for a natural person;
300 penalty units for a body corporate.

- (2) The Magistrates' Court may grant an injunction requiring a person not to contravene or to cease contravening subsection (1).
- (3) If a court convicts a person or finds a person guilty of an offence against subsection (1), the court may make any order that it considers appropriate relating to the validity of all or part of an agreement under Division 1 or 2 (as the case may be).

Division 4—Health and safety representatives

54 Election of health and safety representatives

- (1) A health and safety representative for a designated work group is to be elected by the members of the designated work group.

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- (2) A person is—
- (a) only eligible to be elected as a health and safety representative for a designated work group if he or she is a member of that group; and
 - (b) not eligible to be elected as a health and safety representative if he or she is disqualified under section 56 from acting as a health and safety representative.
- (3) All members of the designated work group are entitled to vote in an election.
- (4) The members of the designated work group may determine how an election is to be conducted (subject to subsection (5)) but, if they do not reach agreement within a reasonable time, any member may ask the Authority to arrange for an inspector to—
- (a) conduct the election; or
 - (b) if the inspector considers it appropriate, appoint another person to conduct the election.
- (5) An election must be conducted in accordance with the procedures (if any) prescribed by the regulations.
- (6) If the number of candidates for election as a health and safety representative equals the number of vacancies, the election need not be conducted and each candidate is to be taken to have been elected as a health and safety representative for the designated work group.

55 Term of office

- (1) A health and safety representative for a designated work group holds office for the following period (not exceeding 3 years)—
- (a) the period agreed, or determined by an inspector under section 45, when the particulars of the designated work group were determined;
 - (b) that period as varied under section 44 or 48—
- starting on the day on which the representative is elected.
- (2) However, a person ceases to hold office as a health and safety representative for a designated work group if—
- (a) the person ceases to be a member of the designated work group; or
 - (b) the person is disqualified under section 56 from acting as a health and safety representative; or
 - (c) the person resigns as the health and safety representative by giving written notice to the employer, or any of the employers, concerned; or
 - (d) a majority of the members of the designated work group resolve (in writing) that the person should no longer represent the designated work group but only if the person has held office for at least 12 months; or

(e) the designated work group is varied unless, as part of the variation, it is agreed or an inspector determines under section 45 that the variation is not to affect the remaining term of office of that health and safety representative.

(3) A health and safety representative is eligible for re-election.

56 Disqualification of health and safety representatives

(1) An employer may apply to the Magistrates' Court to have a health and safety representative disqualified on the ground that the representative has done any of the following things intending to cause harm to the employer or the undertaking of the employer—

- (a) issued a provisional improvement notice to the employer or an employee of the employer in circumstances where the representative could not reasonably have held the belief referred to in section 60;
- (b) issued a direction to cease work under section 74;
- (c) exercised any other power under this Part;
- (d) used any information he or she acquired from the employer for a purpose that is not connected with his or her exercise of a power under this Part.

(2) If the Magistrates' Court is satisfied that the ground in subsection (1) is established, it may disqualify the health and safety representative for a specified period or permanently.

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- (3) For the purpose of determining what (if any) action to take under subsection (2), the Magistrates' Court must take into account—
- (a) what (if any) harm was caused to the employer or the undertaking of the employer by or as a result of the action of the health and safety representative; and
 - (b) the past record of the health and safety representative in exercising powers under this Part.

57 Deputy health and safety representatives

- (1) Each deputy health and safety representative for a designated work group is to be elected in the same way as a health and safety representative for the designated work group.
- (2) If the health and safety representative for a designated work group ceases to hold office or is unable (because of absence or any other reason) to exercise the powers of a health and safety representative under this Part—
 - (a) the powers may be exercised by a deputy health and safety representative (if any) for the designated work group; and
 - (b) this Act (other than this section) applies in relation to the deputy health and safety representative accordingly.
- (3) Sections 55, 56 and 67 apply to deputy health and safety representatives in the same way as they apply to health and safety representatives.

Note

Those sections deal with term of office, disqualification of health and safety representatives and the obligation of employers to train health and safety representatives.

Division 5—Powers of health and safety representatives

58 Powers of health and safety representatives

- (1) A health and safety representative for a designated work group may do any of the following—
- (a) inspect any part of a workplace at which a member of the designated work group works—
 - (i) at any time after giving reasonable notice to the employer concerned or its representative; and
 - (ii) immediately in the event of an incident or any situation involving an immediate risk to the health or safety of any person;
 - (b) accompany an inspector during an inspection of a workplace at which a member of the designated work group works;
 - (c) require the establishment of a health and safety committee;
 - (d) if a member of the designated work group consents, be present at an interview concerning occupational health and safety between—
 - (i) the member and an inspector; or
 - (ii) the member and the employer concerned or its representative;
 - (e) if the health and safety representative is authorised to represent a person mentioned in section 44(1)(e) or 48(1)(e) and that person consents, be present at an interview concerning occupational health and safety between—

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- (i) the person and an inspector; or
 - (ii) the person and the employer concerned or its representative;
- (f) whenever necessary, seek the assistance of any person.
- (2) However, a health and safety representative may do those things only for the purpose of—
- (a) representing the members of the designated work group, or persons mentioned in section 44(1)(e) or 48(1)(e) whom the representative is authorised to represent, concerning health or safety; or
 - (b) monitoring the measures taken by the employer or employers in compliance with this Act or the regulations; or
 - (c) enquiring into anything that poses, or may pose, a risk to the health or safety of members of the designated work group, or of persons mentioned in section 44(1)(e) or 48(1)(e) whom the representative is authorised to represent, at the workplace or workplaces or arising from the conduct of the undertaking of the employer or undertakings of the employers; or
 - (d) attempting to resolve (in accordance with section 73) with the employer concerned or its representative any issues concerning the health or safety of members of the designated work group, or of persons mentioned in section 44(1)(e) or 48(1)(e) whom the representative is authorised to represent, that arise at the workplace or workplaces or from the conduct of the undertaking of the employer.

- (3) Nothing in this Act or the regulations imposes, or is to be taken to impose, a function or duty on a health and safety representative in that capacity.

59 Powers generally limited to the particular designated work group

A health and safety representative for a designated work group may exercise powers under this Part only in respect of matters that affect, or may affect, members of that group, or persons mentioned in section 44(1)(e) or 48(1)(e) whom the representative is authorised to represent, unless—

- (a) there is an immediate risk to health or safety that affects or may affect a member of another designated work group; or
- (b) a member of another designated work group asks for the representative's assistance—

and it is not feasible for the representative to refer the matter to a health and safety representative for the other designated work group.

60 Provisional improvement notices

- (1) If a health and safety representative believes on reasonable grounds that a person—
- (a) is contravening a provision of this Act or the regulations; or
 - (b) has contravened such a provision in circumstances that make it likely that the contravention will continue or be repeated—

the health and safety representative may issue to the person a provisional improvement notice requiring the person to remedy the contravention or likely contravention or the matters or activities causing the contravention or likely contravention.

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- (2) However, the health and safety representative may only do so after consulting with the person about remedying the contravention or likely contravention or the matters or activities causing the contravention or likely contravention.
- (3) A provisional improvement notice must—
- (a) state the representative's belief on which the issue of the notice is based and the grounds for that belief; and
 - (b) specify the provision of this Act or the regulations that the representative considers has been or is likely to be contravened; and
 - (c) specify a day (at least 8 days after the day on which the notice is issued) before which the person is required to remedy the contravention or likely contravention or the matters or activities causing the contravention or likely contravention.

Note

For service of provisional improvement notices, see section 64.

- (4) A person to whom a provisional improvement notice is issued must—
- (a) if the person is an employee, bring the notice to the attention of his or her employer; or
 - (b) if the person is not an employee or is an employer who is given a copy of the notice in accordance with paragraph (a)—
 - (i) bring the notice to the attention of each other person whose work is affected by the notice; and

- (ii) display a copy of the notice in a prominent place at or near the workplace, or part of the workplace, at which work is being performed that is affected by the notice.

Penalty: 5 penalty units for a natural person;
25 penalty units for a body corporate.

61 Provisional improvement notices may include directions

- (1) A provisional improvement notice may include directions on the measures to be taken to remedy the contravention or likely contravention, or the matters or activities causing the contravention or likely contravention, to which the notice relates.
- (2) A direction may—
 - (a) refer to a compliance code; and
 - (b) offer the person to whom it is issued a choice of ways in which to remedy the contravention, likely contravention, matters or activities.

62 Offence to contravene a provisional improvement notice

- (1) A person must comply with a provisional improvement notice issued to him or her in relation to which an inspector has not been required under section 63 to attend at the workplace.

Penalty: 500 penalty units for a natural person;
2500 penalty units for a body corporate.

- (2) An offence against subsection (1) is an indictable offence.

Note

However, the offence may be heard and determined summarily (see section 28 of the **Criminal Procedure Act 2009**).

Note to s. 62(2) amended by No. 68/2009 s. 97(Sch. item 90.13).

63 Attendance of inspector at workplace after issue of provisional improvement notice

- (1) Within 7 days after a provisional improvement notice is issued to a person—
- (a) the person to whom it was issued; or
 - (b) if the person is an employee, his or her employer—

may ask the Authority to arrange for an inspector to attend at the workplace to enquire into the circumstances the subject of the notice.

- (2) The Authority must ensure that an inspector attends the workplace as soon as possible after the request is made and before the day specified in the notice as being the day by which the notice must be complied with.
- (3) The inspector must, as soon as possible—
- (a) enquire into the circumstances the subject of the provisional improvement notice; and
 - (b) affirm (with or without modifications) or cancel the provisional improvement notice by giving written notice to the health and safety representative who issued it and the person to whom it was issued.
- (4) The inspector may perform any of his or her functions or exercise any of his or her powers under this Act that the inspector considers reasonably necessary in the circumstances.

- (5) A notice under subsection (3)(b) must set out—
- (a) the basis for the inspector's decision to affirm or cancel the provisional improvement notice; and
 - (b) if the provisional improvement notice is affirmed, the penalty for contravening that notice; and
 - (c) how the person may seek review of the inspector's decision.
- (6) A person to whom a provisional improvement notice was issued that is affirmed by an inspector under this section must comply with the provisional improvement notice.
- Penalty: 500 penalty units for a natural person;
2500 penalty units for a body corporate.
- (7) An offence against subsection (6) is an indictable offence.

**Note to
s. 63(7)
amended by
No. 68/2009
s. 97(Sch.
item 90.14).**

Note

However, the offence may be heard and determined summarily (see section 28 of the **Criminal Procedure Act 2009**).

64 Service of provisional improvement notice or inspector's notice

A provisional improvement notice, or notice given by an inspector under section 63(3)(b), may be issued or given to a person by—

- (a) delivering it personally to the person or sending it by post or facsimile to the person's usual or last known place of residence or business; or

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- (b) leaving it for the person at the person's usual or last known place of residence or business with a person who is apparently over 16 years and who apparently resides or works there; or
 - (c) leaving it for the person at the workplace to which the notice relates with a person who is apparently over 16 years and who is apparently the occupier for the time being of the workplace.

65 Formal irregularities or defects in provisional improvement notices

A provisional improvement notice, or notice given by an inspector under section 63(3)(b), is not invalid merely because of—

- (a) a formal defect or irregularity in the notice unless the defect or irregularity causes or is likely to cause substantial injustice; or
- (b) a failure to use the correct name of the person to whom the notice is issued if the notice sufficiently identifies the person and is issued to the person in accordance with section 64.

66 Proceedings for offences not affected by notices

The issue, variation or cancellation of a provisional improvement notice, or notice given by an inspector under section 63(3)(b), does not affect any proceedings for an offence against this Act or the regulations in connection with any matter in respect of which the notice was issued.

Division 6—Obligations of employers to health and safety representatives

67 Obligation to train health and safety representatives

- (1) An employer must, if requested by a health and safety representative for a designated work group of which employees of the employer are members, allow the representative to attend the following courses—
 - (a) an initial course of training in occupational health and safety after being elected;
 - (b) a refresher course at least once in each year, after completing the initial course of training, that he or she holds office.
- (2) A request to attend a course must not be made less than 14 days before the course is to start.
- (3) A course must be—
 - (a) approved or conducted by the Authority; and
 - (b) relevant to the work of the members of the designated work group or the role of health and safety representatives; and
 - (c) subject to subsection (5), chosen by the health and safety representative in consultation with the employer.
- (4) The employer must—
 - (a) allow each health and safety representative time off work to attend the courses with such pay as he or she would otherwise be entitled to receive from the employer for working during that period; and

- (b) pay the costs associated with each health and safety representative's attendance at the courses.

Note

If the health and safety representative represents a designated work group of the employees of more than one employer, section 68 provides for the apportionment of those costs among the employers.

- (5) If an employer refuses to allow a health and safety representative to attend a course or they cannot agree on a particular course, the representative may ask the Authority to determine a specified course that the representative may attend for the purposes of subsection (1)(a) or (b).
- (6) A determination must be in writing and the Authority must ensure that it is not made less than 14 days before the specified course is to start.
- (7) An employer who, without reasonable excuse, refuses to allow a health and safety representative to attend a course specified in such a determination is guilty of an offence and liable to a fine not exceeding—
- (a) in the case of a natural person, 60 penalty units; or
 - (b) in the case of a body corporate, 300 penalty units.
- (8) If—
- (a) a health and safety representative represents a designated work group of the employees of more than one employer; and
 - (b) any of those employers has complied with this section in respect of the representative—
- each of those employers is to be taken to have complied with this section in respect of the representative.

68 Obligation to share costs if multiple employers

- (1) If a health and safety representative, or deputy health and safety representative (if any), represents a designated work group of the employees of more than one employer—
 - (a) the costs of the representative exercising powers under this Part; and
 - (b) the costs mentioned in section 67(4)(b)—for which any of the employers are liable must be apportioned equally between each of the employers unless they agree otherwise.
- (2) An agreement to apportion the costs in another way may be varied at any time by negotiation between each employer.

69 Other obligations of employers to health and safety representatives

- (1) An employer, any of whose employees are members of a designated work group must—
 - (a) allow a health and safety representative for the designated work group to have access to information that the employer has relating to—
 - (i) actual or potential hazards arising from the conduct of the undertaking of the employer or the plant or substances used for the purposes of that undertaking; and
 - (ii) the health and safety of the members of the designated work group, or persons mentioned in section 44(1)(e) or 48(1)(e) whom the health and safety representative is authorised to represent;

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- (b) if a member of the designated work group consents, allow a health and safety representative for that group to be present at an interview concerning occupational health and safety between—
 - (i) the member and an inspector; and
 - (ii) the member and the employer or its representative;
 - (c) if the health and safety representative is authorised to represent a person mentioned in section 44(1)(e) or 48(1)(e) and that person consents, be present at an interview concerning occupational health and safety between—
 - (i) the person and an inspector; or
 - (ii) the person and the employer or its representative;
 - (d) allow a health and safety representative for the designated work group to take such time off work with pay as is necessary or prescribed by the regulations for—
 - (i) exercising his or her powers under this Part; or
 - (ii) taking part in any course of training (other than a course of training covered by section 67) relating to occupational health and safety that is approved or conducted by the Authority and of which the employer is given at least 14 days' notice;
 - (e) provide such other facilities and assistance to a health and safety representative for the designated work group as are necessary or prescribed by the regulations to enable the

representative to exercise his or her powers under this Part.

Penalty: 60 penalty units for a natural person;
300 penalty units for a body corporate.

- (2) Despite subsection (1), an employer must not allow a health and safety representative to have access to any medical information concerning an employee without the employee's consent unless the information is in a form—
- (a) that does not identify the employee; or
 - (b) from which the employee's identity cannot reasonably be ascertained.

Penalty: 60 penalty units for a natural person;
300 penalty units for a body corporate.

Note

An employer must not discriminate against an employee, or subject or threaten to subject an employee to any detriment, because the employee is acting or has acted as a health and safety representative (see Division 9).

70 Obligation to persons assisting health and safety representatives

- (1) An employer, any of whose employees are members of a designated work group must allow a person assisting a health and safety representative access to the workplace unless the employer considers that the person is not a suitable person to assist the representative because of insufficient knowledge of occupational health and safety.
- (2) If an employer does not allow a person assisting a health and safety representative access to the workplace, the representative may apply to the Magistrates' Court for an order—

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- (a) directing the employer to allow that access;
and
 - (b) specifying the terms and conditions of that access.

71 Obligation to keep list of health and safety representatives

An employer must ensure that—

- (a) a written list of each health and safety representative and deputy health and safety representative for each designated work group (if any) of the employees of the employer is prepared and kept up-to-date;
and
- (b) a copy of the list is displayed at each workplace under the management and control of the employer or otherwise readily accessible to all employees of the employer.

Penalty: 5 penalty units for a natural person;
25 penalty units for a body corporate.

Division 7—Health and safety committees

72 Health and safety committees

- (1) An employer must establish a health and safety committee in accordance with this section—
 - (a) within 3 months after being requested to do so by a health and safety representative; or
 - (b) if required by the regulations to do so.

Penalty: 10 penalty units for a natural person;
50 penalty units for a body corporate.

Note

An employer is required to consult employees on the membership of the committee (see Part 4).

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- (2) At least half of the members of a health and safety committee must be employees (and, so far as practicable, health and safety representatives or deputy health and safety representatives) of the employer.
- (3) The functions of a health and safety committee are—
- (a) to facilitate co-operation between the employer and employees in instigating, developing and carrying out measures designed to ensure the health and safety at work of the employees; and
 - (b) to formulate, review and disseminate (in other languages if appropriate) to the employees the standards, rules and procedures relating to health and safety that are to be carried out or complied with at the workplace; and
 - (c) such other functions as are prescribed by the regulations or agreed between the employer and the committee.
- (4) A health and safety committee must meet—
- (a) at least once every 3 months; and
 - (b) at any other time if at least half of its members require a meeting.
- (5) Subject to this Act and the regulations, a health and safety committee may determine its own procedures.

Division 8—Resolution of health and safety issues

73 Resolution of health and safety issues

- (1) If an issue concerning health or safety arises at a workplace or from the conduct of the undertaking of an employer—
- (a) the employer or its representative; and
 - (b) the employees affected by the issue or, if there is a designated work group in relation to which the issue has arisen, the health and safety representative for that group—

must attempt to resolve the issue in accordance with the relevant agreed procedure or, if there is no such procedure, the relevant procedure prescribed by the regulations.

Note

If the issue is not resolved within a reasonable time, any of the parties attempting to resolve it may ask the Authority to arrange for an inspector to attend at the workplace to enquire into the issue (see section 75).

- (2) An employer must ensure that its representative (if any) for the purposes of subsection (1)(a)—
- (a) is not a health and safety representative; and
 - (b) has an appropriate level of seniority, and is sufficiently competent, to act as the employer's representative.

Penalty: 60 penalty units for a natural person;
300 penalty units for a body corporate.

74 Direction to cease work

- (1) If—
- (a) an issue concerning health or safety arises at a workplace or from the conduct of the undertaking of an employer; and
 - (b) the issue concerns work which involves an immediate threat to the health or safety of any person; and
 - (c) given the nature of the threat and degree of risk, it is not appropriate to adopt the processes set out in section 73—

the employer or the health and safety representative for the designated work group in relation to which the issue has arisen may, after consultation between them, direct that the work is to cease.

- (2) During any period for which work has ceased in accordance with such a direction, the employer may assign any employees whose work is affected to suitable alternative work.

Note

Any of the parties attempting to resolve the issue may require an inspector to attend the workplace (see section 75).

75 Inspector may be required to attend workplace

- (1) If an issue is not resolved under section 73 within a reasonable time, or an issue is the subject of a direction under section 74 that work is to cease, any of the parties attempting to resolve the issue may ask the Authority to arrange for an inspector to attend at the workplace to enquire into the issue.
- (2) The Authority must ensure that an inspector attends at the workplace as soon as possible after the request is made.

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- (3) The inspector must, as soon as possible, enquire into the issue and may perform any of his or her functions or exercise any of his or her powers under this Act that the inspector considers reasonably necessary in the circumstances.
- (4) If—
- (a) the inspector issues a prohibition notice; or
 - (b) otherwise determines (in writing) that there was reasonable cause for employees to be concerned for their health or safety—
- an employee who, as a result of the issue arising, does not work for any period pending its resolution but would otherwise be entitled to be paid for that period continues to be entitled to be paid for that period.
- (5) A dispute concerning an entitlement under subsection (4) may be referred to the Magistrates' Court or to any other court or tribunal that has jurisdiction in relation to the matter.

Division 9—Discrimination against employees or prospective employees

Subdivision 1—Criminal offences and proceedings

Pt 7 Div. 9
Subdiv. 1
(Heading)
inserted by
No. 34/2009
s. 5.

76 Prohibition on discrimination

- (1) This section applies to—
- (a) an employer who dismisses an employee, injures an employee in the employment of the employer or alters the position of an employee to the employee's detriment; and

- (b) an employer who threatens to do any of those things to an employee; and
 - (c) an employer or prospective employer who refuses or fails to offer employment to a prospective employee, or treats a prospective employee less favourably than another prospective employee would be treated in offering terms of employment.
- (2) The employer or prospective employer is guilty of an indictable offence if the employer or prospective employer engaged in that conduct because the employee or prospective employee (as the case may be)—
- (a) is or has been a health and safety representative or a member of a health and safety committee; or
 - (b) exercises or has exercised a power as a health and safety representative or as a member of a health and safety committee; or
 - (c) assists or has assisted, or gives or has given any information to, an inspector, an authorised representative of a registered employee organisation, a health and safety representative or a member of a health and safety committee; or
 - (d) raises or has raised an issue or concern about health or safety to the employer, an inspector, an authorised representative of a registered employee organisation, a health and safety representative, a member of a health and safety committee or an employee of the employer.

S. 76(2)(c)
amended by
No. 34/2009
s. 4(1).

S. 76(2)(d)
amended by
No. 34/2009
s. 4(2).

Notes

- 1 The effect of section 57(2)(b) is that a reference to a health and safety representative includes a reference to a deputy health and safety representative.

- 2 The offence may be heard and determined summarily (see section 28 of the **Criminal Procedure Act 2009**).

Note 2 to s. 76(2) amended by No. 68/2009 s. 97(Sch. item 90.15).

(3) An employer or prospective employer may be guilty of an offence against subsection (2) only if the reason mentioned in subsection (2)(a), (b), (c) or (d) is the dominant reason why the employer or prospective employer engaged in the conduct.

(4) An employer or prospective employer who is guilty of an offence against subsection (2) is liable to—

(a) in the case of a natural person, a fine not exceeding 500 penalty units; and

S. 76(4)(a) substituted by No. 34/2009 s. 4(3).

(b) in the case of a body corporate, a fine not exceeding 2500 penalty units.

77 Accused bears onus of proof

In proceedings for an offence against section 76, if all the facts constituting the offence other than the reason for the conduct of the accused are proved, the accused bears the onus of proving that the reason alleged in the charge was not the dominant reason why the accused engaged in the conduct.

S. 77 (Heading) amended by No. 68/2009 s. 97(Sch. item 90.16).

S. 77 amended by No. 68/2009 s. 97(Sch. item 90.17).

78 Order for damages or reinstatement

If an employer or prospective employer is convicted or found guilty of an offence against section 76, the court may (in addition to imposing a penalty) make either or both of the following orders—

- (a) an order that the offender pay (within a specified period) such damages to the employee or prospective employee against whom the offender discriminated as the court

considers appropriate to compensate him or her;

- (b) an order that—
- (i) the employee be reinstated or re-employed in his or her former position or, if that position is not available, in a similar position; or
 - (ii) the prospective employee be employed in the position for which he or she had applied or a similar position.

Pt 7 Div. 9
Subdiv. 2
(Heading and
ss 78A–78E)
inserted by
No. 34/2009
s. 6.

Subdivision 2—Civil actions for discriminatory conduct

S. 78A
inserted by
No. 34/2009
s. 6.

78A Prohibition of discriminatory conduct

- (1) An employer or prospective employer must not engage in *discriminatory conduct* for a prohibited reason.
- (2) For the purposes of this subdivision, an employer or prospective employer engages in discriminatory conduct if—
 - (a) the employer of an employee—
 - (i) dismisses the employee, injures an employee in the employment of the employer or alters the position of the employee to the employee's detriment; or
 - (ii) threatens to do any of those things to the employee; or

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- (b) the employer or prospective employer of the prospective employee refuses or fails to offer employment to the prospective employee, or treats the prospective employee less favourably than another prospective employee would be treated in offering terms of employment.

78B Prohibited reasons

S. 78B
inserted by
No. 34/2009
s. 6.

- (1) Conduct referred to in section 78A is for a *prohibited reason* if it is carried out because the employee or prospective employee—
- (a) is or has been a health and safety representative or a member of a health and safety committee; or
 - (b) exercises or has exercised a power as a health and safety representative or as a member of a health and safety committee; or
 - (c) assists or has assisted, or gives or has given any information to, an inspector, an authorised representative of a registered employee organisation, a health and safety representative or a member of a health and safety committee; or
 - (d) raises or has raised an issue or concern about health and safety to an employer, an inspector, an authorised representative of a registered employee organisation, a health and safety representative, a member of a health and safety committee or an employee of the employer.
- (2) For the purposes of section 78A, an employer or prospective employer may be found to have engaged in discriminatory conduct for a prohibited reason if a reason mentioned in subsection (1) is a substantial reason for the conduct.

S. 78C
inserted by
No. 34/2009
s. 6.

**78C Prohibition of authorising or assisting
discriminatory conduct**

A person must not request, instruct, induce, encourage, authorise or assist an employer or prospective employer to engage in discriminatory conduct in contravention of section 78A.

S. 78D
inserted by
No. 34/2009
s. 6.

78D Civil action for discriminatory conduct

- (1) An eligible person may apply to the Industrial Division of the Magistrates' Court for an order under this section.
- (2) The Industrial Division of the Magistrates' Court may make one or more of the following orders in relation to an employer or prospective employer who has contravened section 78A—
 - (a) an order that the employer or prospective employer pay (within a specified period) such damages to the employee or prospective employee who was the subject of the discriminatory conduct as the Court considers appropriate to compensate the employee or prospective employee;
 - (b) an order that—
 - (i) the employee be reinstated or re-employed in the employee's former position or, if that position is not available, in a similar position; or
 - (ii) the prospective employee be employed in the position for which the prospective employee had applied or a similar position;
 - (c) any other order that the Court considers appropriate.

- (3) The Industrial Division of the Magistrates' Court may make one or more of the following orders in relation to a person who has contravened section 78C—
- (a) an order that the accused pay (within a specified period) such damages to the person who was the subject of the discriminatory conduct as the Court considers appropriate to compensate the person;
 - (b) any other order that the Court considers appropriate.
- (4) The orders that may be made under subsections (2)(c) or (3)(b) include—
- (a) injunctions; and
 - (b) any other orders that the Industrial Division of the Magistrates' Court considers necessary to stop the conduct or remedy its effects.
- (5) For the purposes of this section, each of the following is an *eligible person*—
- (a) a person affected by the contravention;
 - (b) another person authorised to represent a person referred to in paragraph (a).
- (6) Nothing in this section is to be construed as limiting any other power of the Industrial Division of the Magistrates' Court.

S. 78D(3)(a) amended by No. 68/2009 s. 97(Sch. item 90.18).

78E Procedure for actions for discriminatory conduct

- (1) A proceeding brought for contravention of section 78A or 78C must be commenced not more than 1 year after the date on which the plaintiff knew or ought to have known that the cause of action accrued.

S. 78E inserted by No. 34/2009 s. 6.

Occupational Health and Safety Act 2004
No. 107 of 2004
Part 7—Representation of Employees

s. 78E

S. 78E(2)
amended by
No. 68/2009
s. 97(Sch.
item 90.19).

(2) In a proceeding for a contravention of section 78A or 78C, if all the facts constituting the alleged discriminatory conduct other than the reason for the conduct of the accused are proved, the accused bears the onus of proving that the reason alleged in the complaint was not a substantial reason for the conduct.

S. 78E(3)
amended by
No. 68/2009
s. 97(Sch.
item 90.20).

(3) It is a defence to a proceeding for a contravention of section 78A or 78C if the accused proves that—

- (a) the conduct was reasonable in the circumstances; and
- (b) a substantial reason for the conduct was to comply with the requirements of this Act or with the **Accident Compensation Act 1985**.

(4) The making of an order in a proceeding for a contravention of section 78A does not prevent the bringing of a proceeding for an offence against section 76 in respect of the same conduct.

(5) If the Industrial Division of the Magistrates' Court makes an order under section 78D in a proceeding for a contravention of section 78A, the court cannot make an order under section 78 in a proceeding for an offence against section 76 in respect of the same conduct.

(6) If the court makes an order under section 78 in a proceeding for an offence against section 76, the Industrial Division of the Magistrates' Court cannot make an order under section 78D in a proceeding for a contravention of section 78A in respect of the same conduct.

**PART 8—AUTHORISED REPRESENTATIVES OF
REGISTERED EMPLOYEE ORGANISATIONS**

Division 1—Definitions

**79 Definitions relating to registered employee
organisations**

In this Part—

committee of management has the same meaning as in the Fair Work (Registered Organisations) Act 2009 of the Commonwealth;

S. 79 def. of *committee of management* amended by No. 24/2009 s. 34(1)(a).

Commonwealth Fair Work Act means the Fair Work Act 2009 of the Commonwealth

S. 79 def. of *Commonwealth Fair Work Act* inserted by No. 24/2009 s. 34(2).

Fair Work Transition Act means the Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 of the Commonwealth;

S. 79 def. of *Fair Work Transition Act* inserted by No. 24/2009 s. 34(2).

office and *officer* of a registered employee organisation have the same meanings as in the Fair Work (Registered Organisations) Act 2009 of the Commonwealth;

S. 79 def. of *office* and *officer* amended by No. 24/2009 s. 34(1)(b).

registered employee organisation means an organisation, of which some or all of the members are employees, that is registered, or taken to be registered, under the Fair Work (Registered Organisations) Act 2009 of the Commonwealth.

S. 79 def. of *registered employee organisation* amended by No. 24/2009 s. 34(1)(c).

Division 2—Entry permits

80 Limit on number of entry permits held by authorised representatives

- (1) The Minister may, by notice published in the Government Gazette, make a determination limiting the number of persons who may hold an entry permit as an authorised representative of a registered employee organisation.
- (2) Before making the determination, the Minister must take into account the advice given by the Authority's Board of Management.

81 Who may hold an entry permit

A person may only hold an entry permit as an authorised representative of a registered employee organisation if he or she—

- (a) is a permanent employee or officer of the organisation, whether engaged on a full-time or part-time basis; and
- (b) has satisfactorily completed a course of training approved (in writing) by the Authority for the purposes of this paragraph; and
- (c) is not disqualified from holding an entry permit by an order of the Magistrates' Court.

Note

For disqualification orders, see section 85.

82 Courses of training for authorised representatives

- (1) The Authority must consult with the Occupational Health and Safety Advisory Committee before approving courses of training for the purposes of section 81.

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- (2) The Authority must regularly review the approved courses of training to ensure they are appropriate for the purposes of this Part and, in doing so, must consult with the Occupational Health and Safety Advisory Committee.

83 Issue of entry permits

- (1) A member of the committee of management of a registered employee organisation, or of a branch of such an organisation, may apply to the Magistrates' Court for an entry permit to be issued to a person who is an officer or employee of the organisation as an authorised representative of the organisation.
- (2) An application for an entry permit must specify the person who is to hold the entry permit and include a statutory declaration or affidavit declaring or deposing—
- (a) that the person is qualified under section 81 to hold an entry permit; and
 - (b) that the issue of the entry permit would not exceed the limit set out in the Minister's determination (if any) under section 80; and
 - (c) whether—
 - (i) any entry permits issued to the person have been revoked; or
 - (ii) the person has been convicted or found guilty of an offence against this Part; or
 - (iii) the person has been convicted or found guilty of any indictable offence within the previous 5 years.
- (3) The Magistrates' Court may issue an entry permit to a person if it is satisfied about each of the matters in subsections (2)(a) and (b) and has had regard to the matters in subsection (2)(c).

- (4) An entry permit must include the information (if any) prescribed by the regulations.
- (5) A person who holds an entry permit is an authorised representative of the registered employee organisation that applied for the permit.

84 Expiry of entry permits

- (1) An entry permit issued to a person as an authorised representative of a registered employee organisation expires at the earlier of—
 - (a) 3 years after it is issued; or
 - (b) when the person ceases to be a permanent employee or officer of the organisation, whether engaged on a full-time or part-time basis; or
 - (c) when the organisation ceases to be a registered employee organisation.

Note

An entry permit may also be revoked (see section 85).

- (2) Before an entry permit has expired, an application may be made for the issue of a subsequent entry permit.

85 Revocation and disqualification

- (1) The Authority or an employer may apply to the Magistrates' Court for an entry permit held by a person to be revoked because the person has—
 - (a) in exercising or purporting to exercise a power under this Part—
 - (i) intentionally hindered or obstructed an any employer or employee; or
 - (ii) acted unreasonably or otherwise than for the purposes of exercising a power under this Part; or

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- (b) intentionally used or disclosed, for a purpose not reasonably connected with the exercise of a power under this Part, information that was acquired from any employer or employee.
- (2) The applicant must give written notice of the application, setting out the grounds for it, to the person who holds the entry permit and the registered employee organisation concerned.
- (3) The person who holds the entry permit and the registered employee organisation are parties to the application.
- (4) If the Magistrates' Court is satisfied on the balance of probabilities about any of the matters in subsection (1)(a) or (b), it may make an order—
- (a) revoking the entry permit; and
 - (b) if it considers it appropriate to do so, disqualifying the person from holding an entry permit for a specified period (of no more than 5 years).
- (5) In deciding what action to take under subsection (4), the Magistrates' Court must take into account—
- (a) the extent (if any) of harm, loss or damage caused; and
 - (b) the person's past record in exercising powers under this Part as an authorised representative.

86 Return of expired or revoked entry permits

Within 14 days after an entry permit expires or is revoked, the person to whom it was issued must return it to a registrar or deputy registrar of the Magistrates' Court.

Division 3—Entry by authorised representatives

87 Entry powers of authorised representatives

(1) This section applies if an authorised representative of a registered employee organisation reasonably suspects that a contravention of this Act or the regulations has occurred or is occurring at a place that is a workplace and any of the following paragraphs applies—

(a) the suspected contravention relates to or affects work that is being carried out by one or more members of the registered employee organisation or relates to or affects any of those members;

S. 87(1)(b)
substituted by
No. 24/2009
s. 35(1).

(b) the suspected contravention relates to or affects work that is being carried out by one or more persons whose employment is subject to a collective agreement, a certified agreement or an enterprise agreement, or relates to or affects any of those persons, and that agreement applies to the registered employee organisation;

S. 87(1)(c)
substituted by
No. 24/2009
s. 35(1).

(c) the suspected contravention relates to or affects work that is being carried out by one or more persons—

(i) who are eligible to be members of the registered employee organisation; and

(ii) whose employment is not subject to a collective agreement, a certified agreement or an enterprise agreement which applies to any registered employee organisation—

or relates to or affects any of those persons.

Note

Place is defined in section 5 as including a car, truck, ship, boat, airplane and any other vehicle.

- (2) The authorised representative may enter the place, during working hours, for the purpose only of enquiring into the suspected contravention.
- (3) Nothing in this section requires an authorised representative of a registered employee organisation to disclose to another person the names of persons who are members of that organisation.

- (4) In this section—

certified agreement means a pre-reform certified agreement that continues in existence as a transitional instrument under the Fair Work Transition Act;

collective agreement means a workplace agreement that is a collective agreement that continues in existence as a transitional instrument under the Fair Work Transition Act;

enterprise agreement means an enterprise agreement made under the Commonwealth Fair Work Act.

Note

Section 90 provides certain limitations on the exercise of the powers conferred by this section.

S. 87(4)
substituted by
No. 24/2009
s. 35(3).

88 Announcement on entry

- (1) Immediately on entering a place under section 87, an authorised representative of a registered employee organisation must take all reasonable steps to give a notice to and produce his or her entry permit for inspection by—
 - (a) the employer who has, or a person who on behalf of the employer has, the management and control of the work at the place; and

- (b) if members of a designated work group are affected in any way by the entry, a health and safety representative for that group.
- (2) The notice must be in the form approved (in writing) by the Authority and include a description of the suspected contravention.

89 Powers on entry

- (1) An authorised representative of a registered employee organisation who enters a place under section 87 may do any of the following but only to the extent that it is reasonable for the purpose of enquiring into the suspected contravention—
 - (a) inspect any plant, substance or other thing at the place;
 - (b) observe work carried on at the place;
 - (c) consult with one or more employees (with their consent) at the place who are members or are eligible to be members of the registered employee organisation;
 - (d) consult with any employer at the place about anything relevant to the matter into which the representative is enquiring.
- (2) The authorised representative must produce his or her entry permit for inspection if asked to do so when exercising any of the powers under subsection (1).
- (3) If, while the authorised representative is at the place, an issue arises between the authorised representative and the employer who has, or a person who on behalf of the employer has, the management and control of the work at the place about the exercise of any of those powers, either of those persons may ask the Authority to arrange for an inspector to attend at the place to enquire into the issue.

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- (4) The Authority must ensure that an inspector attends the place as soon as possible after the request is made and the inspector—
- (a) must as soon as possible enquire into the issue; and
 - (b) may perform any of his or her functions or exercise any of his or her powers under this Act that the inspector considers reasonably necessary in the circumstances.

90 Limitations on exercise of powers

- (1) Despite anything else in this Part, an authorised representative of a registered employee organisation is not entitled to exercise a power under this Part in respect of—
- (a) any part of a place that is used for residential purposes except with the consent of the occupier for the time being of the place; or
 - (b) any part of a place to which access is limited to any extent, by or under another Act, to particular persons or circumstances the effect of which is that the authorised representative is precluded from entering the part of the place.
- (2) Despite anything else in this Part but subject to subsection (3), an authorised representative of a registered employee organisation is not entitled to exercise a power under this Part in respect of a place, except with the consent of the employer who has, or a person who on behalf of the employer has, the management and control of the work, if the exercise of that power would cause any work at the place to cease.
- (3) Nothing in subsection (2) prevents an authorised representative who reasonably believes that there is an immediate and significant risk of serious

injury or death to one or more employees from warning the employee or employees of that risk.

- (4) To avoid doubt, nothing in subsection (2) prevents an authorised representative from consulting with an employee during his or her meal-time or other breaks.

Division 4—Offences relating to authorised representatives

91 Offences by authorised representatives

An authorised representative must not—

- (a) intentionally and unreasonably hinder or obstruct any employer or employee; or
- (b) intentionally intimidate or threaten any employer or employee; or
- (c) intentionally use or disclose, for a purpose not reasonably connected with the exercise of a power under this Part, information that was acquired from any employer or employee; or
- (d) intentionally exercise or purport to exercise a power under this Part other than for the purpose of enquiring into a suspected contravention of this Act or the regulations.

Penalty: 60 penalty units.

92 Loss or damage caused by authorised representative

- (1) If an authorised representative of a registered employee organisation is convicted or found guilty of an offence against section 91, a person who suffers significant loss or damage as a result of the commission of the offence is entitled to recover from that organisation, by action in a court of competent jurisdiction, an amount in respect of that loss or damage.

- (2) A court may make an order in proceedings under subsection (1) for the payment of an amount that the court considers reasonable in the circumstances.

93 Offence to obstruct etc. authorised representative

A person must not—

- (a) refuse an authorised representative entry to a workplace; or
- (b) intentionally hinder, obstruct, intimidate or threaten an authorised representative in the exercise of his or her powers under this Part, or induce or attempt to induce any other person to do so.

Penalty: 60 penalty units for a natural person;
300 penalty units for a body corporate.

94 Offence to impersonate authorised representative

A person who does not hold an entry permit issued under this Part must not, in any way, hold himself or herself out as—

- (a) a person who holds such an entry permit; or
- (b) an authorised representative of a registered employee organisation.

Penalty: 60 penalty units.

PART 9—INSPECTORS AND ENFORCEMENT

Division 1—Appointment of inspectors

95 Appointment of inspectors

- (1) The Authority may, by instrument in writing—
 - (a) appoint an officer or employee of the Authority to be an inspector for the purposes of this Act; and
 - (b) appoint a person employed under Part 3 of the **Public Administration Act 2004** by the Department Head (within the meaning of that Act) of the Department of Primary Industries to be an inspector for the purposes of this Act in respect of activities carried out under the **Petroleum Act 1998** or the **Mineral Resources (Sustainable Development) Act 1990**.
- (2) The appointment of a person as an inspector for the purposes of this Act and either or both of the following Acts may be made by a single instrument—
 - (a) the **Dangerous Goods Act 1985**;
 - (b) the **Equipment (Public Safety) Act 1994**.
- (3) The Authority must give each inspector a certificate of appointment signed by the chief executive of the Authority (appointed under section 22 of the **Accident Compensation Act 1985**).
- (4) A certificate of appointment given to an inspector in accordance with subsection (3) is conclusive proof of the valid appointment of the inspector under this section.

S. 95(1)(b)
amended by
Nos 63/2006
s. 61(Sch.
item 26.2),
6/2009 s. 56.

96 Identity cards

- (1) The Authority must issue an identity card to each inspector containing a photograph of the inspector and his or her signature.
- (2) An inspector must produce his or her identity card for inspection if asked to do so when performing a function or exercising a power under this Act or the regulations.
- (3) If a person to whom an identity card has been issued ceases to be an inspector, the person must return the identity card to the Authority as soon as practicable.

Division 2—Performance of functions or exercise of powers

97 Inspectors subject to Authority's directions

- (1) An inspector is subject to the Authority's directions in the performance of his or her functions or exercise of his or her powers under this Act or the regulations.
- (2) A direction under subsection (1) may be of a general nature or may relate to a specified matter or specified class of matter.

Division 3—Powers relating to entry

98 Power to enter

- (1) An inspector may enter a place that the inspector reasonably believes is a workplace at any time during working hours.

- (2) However, an inspector may enter any place at any time if the inspector reasonably believes that there is an immediate risk to the health or safety of a person arising from the conduct of an undertaking at the place.

Note

Place is defined in section 5 as including a car, truck, ship, boat, airplane and any other vehicle.

99 General powers on entry

An inspector who enters a place under this Division may do any of the following—

- (a) inspect, examine and make enquiries at the place;
- (b) inspect and examine any thing (including a document) at the place;
- (c) bring any equipment or materials to the place that may be required;
- (d) seize any thing (including a document) at the place that may afford evidence of the commission of an offence against this Act or the regulations;
- (e) seize any thing at the place for further examination or testing but only if the inspector reasonably believes that the examination or testing is reasonably necessary and cannot be reasonably conducted on site;
- (f) take photographs or measurements or make sketches or recordings;
- (g) exercise any other power conferred on the inspector by this Act or the regulations;

- (h) do any other thing that is reasonably necessary for the purpose of the inspector performing his or her functions or exercising his or her powers under this Act or the regulations.

Note

The powers conferred by this section are limited if all or part of the place is used only for residential purposes (see section 107).

100 Power to require production of documents etc.

- (1) An inspector who enters a place under this Division may—
- (a) require a person to produce a document or part of a document located at the place that is in the person's possession or control; and
 - (b) examine that document or part; and
 - (c) require a person at the place to answer any questions put by the inspector.
- (2) A person must not, without reasonable excuse, refuse or fail to comply with a requirement under subsection (1).

Penalty: 60 penalty units for a natural person;
300 penalty units for a body corporate.

- (3) Before requiring a person to produce a document or part of a document or to answer questions under subsection (1), an inspector—
- (a) must produce his or her identity card for inspection by the person and warn the person that a refusal or failure to comply with the requirement, without reasonable excuse, is an offence; and

(b) must inform the person that he or she may refuse or fail to answer any question if answering the question would tend to incriminate him or her.

(4) A person is not liable to be prosecuted for an offence against subsection (2) if the inspector concerned failed to comply with subsection (3).

Notes

- 1 The powers conferred by this section are limited if all or part of the place is used only for residential purposes (see section 107).
- 2 This section does not affect legal professional privilege or client legal privilege (see section 155) or, in the case of a requirement to answer questions, the privilege against self-incrimination (see section 154).

Note 2 to s. 100(4) amended by No. 69/2009 s. 54(Sch. Pt 1 item 40.1).

101 Power to take samples

- (1) An inspector who enters a place under this Division may take (without payment) samples of any thing at the place that may be required for analysis.
- (2) If an inspector intends to take a sample, he or she must notify the following persons of his or her intention—
 - (a) the occupier or apparent occupier for the time being of the place; and
 - (b) if members of a designated work group are affected in any way by the taking of the sample, a health and safety representative for that group.
- (3) Unless it is unsafe to do so, after taking the sample the inspector must—
 - (a) divide it into as many parts as are necessary and mark and seal or fasten up each part in a way that the nature of the sample allows; and

- (b) if any of the persons who must be notified in accordance with subsection (2) requires the inspector to give the person a part, give one part to each of the persons who must be notified in accordance with that subsection; and
 - (c) keep one part for future comparison.
- (4) If it is determined that the sample is to be analysed the inspector must submit another part to an analyst for that purpose.

Division 4—Procedure relating to entry

102 Announcement on entry

- (1) Immediately on entering a place under Division 3, an inspector must take all reasonable steps to notify the following persons of the entry and to produce his or her identity card for inspection by those persons—
- (a) the occupier or apparent occupier for the time being of the place;
 - (b) if members of a designated work group are affected in any way by the entry, a health and safety representative for the designated work group.
- (2) However, an inspector is not required to notify, or produce his or her identity card for inspection by, a person if—
- (a) to do so would defeat the purpose for which the place was entered or cause unreasonable delay; or
 - (b) the person is already aware that the inspector has entered the place or was notified in advance of when he or she would enter.

103 Report to be given about entry

- (1) An inspector who enters a place under Division 3 must give a report concerning the entry when, or as soon as practicable after, the inspector leaves the place to—
 - (a) the occupier or apparent occupier for the time being of the place; and
 - (b) if members of a designated work group work at the workplace, a health and safety representative for the designated work group.
- (2) The report must be in writing and include—
 - (a) the time of the entry and departure; and
 - (b) the purpose of the entry; and
 - (c) a description of things done while at the place; and
 - (d) a summary of the inspector's observations while at the place; and
 - (e) the procedure for contacting the Authority and the inspector for further details of the entry; and
 - (f) the procedure for seeking review of any decision made by the inspector during the entry.
- (3) If the inspector takes photographs or makes sketches or recordings under section 99(f), the report must also include a statement that—
 - (a) the photographs have been taken or sketches or recordings have been made; and
 - (b) they are or will be available for inspection at a specified place.

Division 5—Search warrants

104 Issue of search warrants

- (1) An inspector may apply to a magistrate for the issue of a search warrant in relation to a particular place if the inspector believes on reasonable grounds that there is, or may be within the next 72 hours, a particular thing (including a document) at the place that may afford evidence of the commission of an offence against this Act or the regulations.
- (2) A magistrate may issue the search warrant if he or she is satisfied by evidence on oath, whether oral or by affidavit, that there are reasonable grounds for suspecting that there is, or may be within 72 hours, a particular thing (including a document) at the place that may afford evidence of the commission of an offence against this Act or the regulations.
- (3) The search warrant may authorise a named inspector and any assistants the inspector considers necessary—
 - (a) to enter the place or part of the place named or described in the warrant; and
 - (b) to search for the thing named or described in the warrant.
- (4) In addition to any other requirement, the search warrant must state—
 - (a) the offence suspected; and
 - (b) the place to be searched; and
 - (c) a description of the thing for which the search is to be made; and
 - (d) any conditions to which the warrant is subject; and

- (e) whether entry is authorised to be made at any time or during specified hours; and
 - (f) that the warrant authorises entry on only one occasion; and
 - (g) a day, not later than 7 days after the warrant is issued, on which it ceases to have effect.
- (5) A search warrant must be issued in accordance with the **Magistrates' Court Act 1989** and in the form prescribed under that Act.
- (6) The rules that apply to search warrants mentioned in the **Magistrates' Court Act 1989** extend and apply to search warrants under this section.

105 Announcement before entry on warrant

- (1) Before executing a search warrant, the inspector named in the warrant or an assistant to the inspector must—
- (a) announce that he or she is authorised by the warrant to enter the place; and
 - (b) give any person at the place an opportunity to allow that entry.
- (2) However, the inspector or an assistant to the inspector need not comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the place is needed to ensure—
- (a) the safety of any person; or
 - (b) that the effective execution of the warrant is not frustrated.

106 Copy of warrant to be given to occupier

If an occupier or apparent occupier is present at the place when a search warrant is being executed, the inspector must—

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- (a) identify himself or herself to that person by producing his or her identity card for inspection; and
 - (b) give that person a copy of the execution copy of the warrant.

Division 6—Limitation on entry powers

107 Places used for residential purposes

Despite anything else in this Part, the powers of an inspector under this Part in relation to entering a place are not exercisable in respect of any part of a place that is used only for residential purposes except—

- (a) with the consent of the occupier for the time being of the place; or
- (b) under the authority conferred by a search warrant.

Division 7—Return and forfeiture of seized things

108 Return of seized things

- (1) As soon as possible after an inspector seizes any thing (including a document) under this Part the Authority must return the thing to the owner unless—
 - (a) the Authority considers it necessary to retain the thing because it may afford evidence in proceedings, that have been or may be commenced, for an offence against this Act or the regulations; or
 - (b) the thing is forfeited to the Authority under section 109; or
 - (c) the Authority is otherwise authorised (by a law or court order) to retain, destroy or dispose of the thing.

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- (2) The thing may be returned either unconditionally or on such terms and conditions as the Authority considers appropriate to eliminate or reduce any risks to health or safety.
 - (3) If the Authority imposes terms or conditions on the return of a thing, the owner must comply with each of those terms and conditions.

Penalty: 60 penalty units for a natural person;
300 penalty units for a body corporate.

109 Forfeiture of seized things

- (1) Any thing (including a document) that an inspector has seized and retained under this Part is forfeited to the Authority if the Authority—
 - (a) cannot find its owner despite making reasonable enquiries; or
 - (b) cannot return it to the owner despite making reasonable efforts; or
 - (c) considers it necessary to retain the thing to prevent the commission of an offence against this Act or the regulations.
- (2) If a thing is forfeited to the Authority under subsection (1)(c), the Authority must notify (in writing) the owner accordingly, setting out how the owner may seek review of the decision to forfeit the thing, unless the Authority cannot find the owner despite making reasonable enquiries.

Division 8—Powers to issue notices

110 Power to issue non-disturbance notice

- (1) An inspector who has entered a place under this Part may issue a non-disturbance notice to a person who is or appears to be the occupier for the time being of the place requiring the person to—

- (a) stop the use or movement of, or interference with, any specified plant, substance or other thing at the place; and
- (b) prevent the disturbance of the specified plant, substance or other thing or a specified area of the place where the plant, substance or other thing is located—

if the inspector reasonably believes that it is necessary to do so to facilitate the performance of his or her functions or exercise of his or her powers under this Act or the regulations in relation to the place or any plant, substance or other thing at the place.

- (2) A non-disturbance notice must specify the period (of no more than 7 days) for which it applies and set out—
 - (a) the obligations of the person to whom the notice is issued; and
 - (b) the penalty for contravening the notice; and
 - (c) how the person may seek review of the issue of the notice; and
 - (d) a statement of the effect of section 117 (proceedings for offences not affected by notices).
- (3) If an inspector considers it necessary to do so, he or she may issue one or more subsequent non-disturbance notices to a person, whether before or after the expiry of the previous notice, each of which must comply with subsection (2).
- (4) A person who, without reasonable excuse, fails to comply with a non-disturbance notice issued to the person is guilty of an indictable offence and liable to a fine not exceeding—
 - (a) in the case of a natural person, 500 penalty units; or

- (b) in the case of a body corporate, 2500 penalty units.

Note to
s. 110(4)
amended by
No. 68/2009
s. 97(Sch.
item 90.21).

Note

However, the offence may be heard and determined summarily (see section 28 of the **Criminal Procedure Act 2009**).

111 Power to issue improvement notice

- (1) If an inspector reasonably believes that a person—
- (a) is contravening a provision of this Act or the regulations; or
 - (b) has contravened such a provision in circumstances that make it likely that the contravention will continue or be repeated—

the inspector may issue to the person an improvement notice requiring the person to remedy the contravention or likely contravention or the matters or activities causing the contravention or likely contravention.

- (2) An improvement notice must—
- (a) state the basis for the inspector's belief on which the issue of the notice is based; and
 - (b) specify the provision of this Act or the regulations that the inspector considers has been or is likely to be contravened; and
 - (c) specify a date (with or without a time) by which the person is required to remedy the contravention or likely contravention or the matters or activities causing the contravention or likely contravention, that the inspector considers is reasonable having regard to the severity of the risk to the health or safety of any person and the nature of the contravention or likely contravention; and

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- (d) set out the penalty for contravening the notice; and
- (e) state how the person may seek review of the issue of the notice; and
- (f) include a statement of the effect of section 117 (proceedings for offences not affected by notices).
- (3) An improvement notice may include directions concerning the measures to be taken to remedy the contravention or likely contravention, or the matters or activities causing the contravention or likely contravention, to which the notice relates and may, in particular, include—
- (a) a direction that if the person has not remedied the contravention, likely contravention, matters or activities (as the case may be) by the date and time (if any) specified in the notice, an activity to which the notice relates is to cease until an inspector has certified in writing that the contravention, likely contravention, matters or activities have been remedied; and
- (b) interim directions, or interim conditions on the carrying on of any activities to which the notice relates, that the inspector considers necessary to minimise risks to the health or safety of a person.
- (4) A person to whom an improvement notice is issued must comply with the notice.

Penalty: 500 penalty units for a natural person;
2500 penalty units for a body corporate.

- (5) An offence against subsection (4) is an indictable offence.

Note to
s. 111(5)
amended by
No. 68/2009
s. 97(Sch.
item 90.22).

Note

However, the offence may be heard and determined summarily (see section 28 of the **Criminal Procedure Act 2009**).

- (6) If an application for review of a decision under this section has been made under Part 10, an inspector must not give a certificate under subsection (3)(a) in relation to the improvement notice concerned until after the review ends.

112 Power to issue prohibition notice

- (1) If an inspector reasonably believes that—
- (a) an activity is occurring at a workplace that involves or will involve an immediate risk to the health or safety of a person; or
 - (b) an activity may occur at a workplace that, if it occurs, will involve an immediate risk to the health or safety of a person—

the inspector may issue to a person who has or appears to have control over the activity a prohibition notice prohibiting the carrying on of the activity, or the carrying on of the activity in a specified way, until an inspector has certified in writing that the matters that give or will give rise to the risk have been remedied.

- (2) A prohibition notice must—
- (a) state the basis for the inspector's belief on which the issue of the notice is based; and
 - (b) specify the activity which the inspector believes involves or will involve the risk and the matters which give or will give rise to the risk; and

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- (c) if the inspector believes that the activity involves a contravention or likely contravention of a provision of this Act or the regulations, specify that provision and state the basis for that belief; and
 - (d) set out the penalty for contravening the notice; and
 - (e) state how the person may seek review of the issue of the notice; and
 - (f) include a statement of the effect of section 117 (proceedings for offences not affected by notices).
- (3) A prohibition notice may include directions on the measures to be taken to remedy the risk, activities or matters to which the notice relates, or the contravention or likely contravention mentioned in subsection (2)(c).
- (4) A prohibition notice that prohibits the carrying on of an activity in a specified way may do so by specifying one or more of the following—
- (a) a workplace, or part of a workplace, at which the activity is not to be carried out;
 - (b) any thing 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) A person to whom a prohibition notice is issued must comply with the notice.

Penalty: 500 penalty units for a natural person;
2500 penalty units for a body corporate.

Note to
s. 112(6)
amended by
No. 68/2009
s. 97(Sch.
item 90.23).

- (6) An offence against subsection (5) is an indictable offence.

Note

However, the offence may be heard and determined summarily (see section 28 of the **Criminal Procedure Act 2009**).

- (7) If an application for review of a decision under this section has been made under Part 10, an inspector must not give a certificate under subsection (1) in relation to the prohibition notice concerned until after the review ends.

113 Directions or conditions in notices

A direction or condition included in an improvement notice or prohibition notice may—

- (a) refer to a compliance code; and
- (b) offer the person to whom it is issued a choice of ways in which to remedy the contravention, likely contravention, matters or activities concerned.

114 Variation or cancellation of notices

A non-disturbance notice, improvement notice or prohibition notice issued by an inspector may only be varied or cancelled by the Authority.

Note

The Authority may vary or cancel such a notice in the same way that an inspector may make the notice (see section 41A of the **Interpretation of Legislation Act 1984**).

115 Service of notices

- (1) A non-disturbance notice, improvement notice or prohibition notice may be issued to a person by—
- (a) delivering it personally to the person or sending it by post or facsimile to the person's usual or last known place of residence or business; or

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- (b) leaving it for the person at the person's usual or last known place of residence or business with a person who is apparently over 16 years and who apparently resides or works there; or
 - (c) leaving it for the person at the workplace to which the notice relates with a person who is apparently over 16 years and who apparently is the occupier for the time being of the workplace.
- (2) A person to whom a non-disturbance notice, improvement notice or prohibition notice is issued must as soon as possible—
- (a) if the person is an employee, give a copy of the notice to his or her employer; or
 - (b) if the person is not an employee or is an employer who is given a copy of the notice in accordance with paragraph (a)—
 - (i) bring the notice to the attention of each other person whose work is affected by the notice; and
 - (ii) give a copy of the notice to each health and safety representative who represents employees whose work is affected by the notice; and
 - (iii) display a copy of the notice in a prominent place at or near the workplace, or part of the workplace, at which work is being performed that is affected by the notice.

Penalty: 5 penalty units for a natural person;
25 penalty units for a body corporate.

116 Formal irregularities or defects in notices

A non-disturbance notice, improvement notice or prohibition notice is not invalid merely because of—

- (a) a formal defect or irregularity in the notice unless the defect or irregularity causes or is likely to cause substantial injustice; or
- (b) a failure to use the correct name of the person to whom the notice is issued if the notice sufficiently identifies the person and is issued to the person in accordance with section 115.

117 Proceedings for offences not affected by notices

The issue, variation or cancellation of a non-disturbance notice, improvement notice or prohibition notice does not affect any proceedings for an offence against this Act or the regulations in connection with any matter in respect of which the notice was issued.

118 Injunctions for non-compliance with notices

- (1) The Authority may apply to the Supreme Court for an injunction—
 - (a) compelling a person to comply with a non-disturbance notice, improvement notice or prohibition notice; or
 - (b) restraining a person from contravening such a notice.
- (2) The Authority may do so whether or not proceedings have been instituted for an offence against this Act or the regulations in connection with any matter in respect of which the notice was issued.

Division 9—Other powers

119 Power to require name and address

- (1) An inspector may ask a person to state his or her name and address if the inspector reasonably believes that the person—
 - (a) may be able to assist in the investigation of an indictable offence under this Act that has been committed or is suspected of having been committed; or
 - (b) has committed or is about to commit an offence (whether indictable or summary) under this Act or the regulations.
- (2) The inspector must inform the person of the grounds for his or her belief in sufficient detail to allow the person to understand the nature of the offence or suspected offence.
- (3) A person who, in response to being asked to state his or her name and address in accordance with this section—
 - (a) refuses or fails to do so; or
 - (b) states a name that is false in a material particular; or
 - (c) states an address other than the full and correct address of his or her ordinary place of residence or business—is guilty of an offence and liable to a fine not exceeding 5 penalty units.
- (4) A person who is asked to state his or her name and address may ask the inspector to produce his or her identity card for inspection.

120 Power to give directions

- (1) An inspector may give a direction (either orally or in writing) to a person at a workplace if the inspector reasonably believes that it is necessary to do so because of an immediate risk to the health or safety of any person.
- (2) A person must not, without reasonable excuse, refuse or fail to comply with a direction given to the person under subsection (1).

Penalty: 500 penalty units for a natural person;
2500 penalty units for a body corporate.

- (3) An offence against subsection (2) is an indictable offence.

Note to
s. 120(3)
amended by
No. 68/2009
s. 97(Sch.
item 90.24).

Note

However, the offence may be heard and determined summarily (see section 28 of the **Criminal Procedure Act 2009**).

Division 10—Other matters

121 Persons who must assist inspector

The following persons must not, without reasonable excuse, refuse or fail to provide such assistance as an inspector may reasonably require for the performance of his or her functions or exercise of his or her powers under this Act or the regulations—

- (a) an occupier or apparent occupier for the time being of a workplace;
- (b) an employer who has the management and control of a workplace;
- (c) an employee at a workplace.

Penalty: 60 penalty units for a natural person;
300 penalty units for a body corporate.

122 Other assistance in exercising powers

- (1) For the purpose of exercising a power under this Act or the regulations, an inspector may seek the assistance of any person.
- (2) If the power being exercised involves entry to a workplace, the person assisting must be allowed access to that workplace by—
 - (a) the occupier or apparent occupier for the time being of the workplace; or
 - (b) the employer who has the management and control of the workplace.

Penalty: 60 penalty units for a natural person;
300 penalty units for a body corporate.

- (3) If an inspector uses the assistance of an interpreter—
 - (a) any enquiry or request made by the interpreter on the inspector's behalf is taken to have been made by the inspector; and
 - (b) any answer given to the interpreter is taken to have been given to the inspector.

123 Inspector may take affidavits

An inspector is authorised to take affidavits for any purpose relating or incidental to the performance of his or her functions or exercise of his or her powers under this Act or the regulations.

124 Inspector may copy documents

An inspector may make copies of, or take extracts from, a document or part of a document given to the inspector in accordance with a requirement under this Act or the regulations.

Division 11—Offences

125 Offences in relation to inspections

- (1) A person must not—
- (a) intentionally hinder or obstruct an inspector in the performance of his or her functions or exercise of his or her powers under this Act or the regulations, or induce or attempt to induce any other person to do so; or
 - (b) intentionally conceal from an inspector the location or existence of any other person or any plant, substance or other thing; or
 - (c) intentionally prevent or attempt to prevent any other person from assisting an inspector.

Penalty: 60 penalty units for a natural person;
300 penalty units for a body corporate.

- (2) A person must not assault, directly or indirectly intimidate or threaten, or attempt to intimidate or threaten, an inspector or a person assisting an inspector.

Penalty: Imprisonment for 2 years, or
240 penalty units, or both for a natural
person;
1200 penalty units for a body corporate.

126 Offence to impersonate inspector

A person who is not an inspector must not, in any way, hold himself or herself out to be an inspector.

Penalty: 60 penalty units.

PART 10—REVIEW OF DECISIONS

127 Which decisions are reviewable

- (1) The following table sets out—
- (a) decisions made under this Act that are reviewable in accordance with this Part (*reviewable decisions*); and
 - (b) who is eligible to apply for review of a reviewable decision (the *eligible person* in relation to the reviewable decision).
- (2) To avoid doubt, sections 4 and 5 of the **Victorian Civil and Administrative Tribunal Act 1998** apply for the purposes of this Act.

Note

Under section 4 of that Act, a person makes a decision if the person refuses to make a decision or an instrument, imposes a condition or restriction or does or refuses to do any other act or thing. Section 5 of that Act sets out when a person's interests are affected by a decision.

<i>Item</i>	<i>Provision under which reviewable decision is made</i>	<i>Eligible person in relation to reviewable decision</i>
1.	Section 45 (determination of unresolved particulars concerning designated work groups)	(1) An employee whose interests are affected by the decision. (2) An employer whose interests are affected by the decision.
2.	Section 54(4)(b) (appointment by an inspector of a person to conduct an election of a health and safety representative)	(1) An employee whose interests are affected by the decision. (2) An employer whose interests are affected by the decision.

Occupational Health and Safety Act 2004

No. 107 of 2004

Part 10—Review of Decisions

s. 127

<i>Item</i>	<i>Provision under which reviewable decision is made</i>	<i>Eligible person in relation to reviewable decision</i>
3.	Section 63(3)(b) (decision to affirm or cancel a provisional improvement notice)	<p>(1) The person to whom the provisional improvement notice was issued.</p> <p>(2) The health and safety representative who issued the provisional improvement notice.</p> <p>(3) A health and safety representative who represents an employee, or represents a person mentioned in section 44(1)(e) or 48(1)(e), whose interests are affected by the decision.</p> <p>(4) An employee whose interests are affected by the decision.</p> <p>(5) An employer whose interests are affected by the decision.</p>
4.	Section 75(4)(b) (determination that there was reasonable cause for employees to be concerned for their health or safety)	<p>(1) An employee whose interests are affected by the decision.</p> <p>(2) An employer whose interests are affected by the decision.</p> <p>(3) A health and safety representative whose direction under section 74 to cease work gave rise to the decision.</p>
5.	Section 108(2) (terms and conditions on the return of seized things)	<p>(1) The owner of the seized thing.</p> <p>(2) A person who has an interest in the seized thing.</p> <p>(3) Any other person whose interests are affected by the decision.</p>

Occupational Health and Safety Act 2004
No. 107 of 2004
Part 10—Review of Decisions

s. 127

<i>Item</i>	<i>Provision under which reviewable decision is made</i>	<i>Eligible person in relation to reviewable decision</i>
6.	Section 109(1) (forfeiture of seized things)	<ol style="list-style-type: none">(1) A person to whom a notice of forfeiture is issued under section 109(2).(2) A person who has an interest in the seized thing.(3) Any other person whose interests are affected by the decision.
7.	Section 110(1) (issue of a non-disturbance notice)	<ol style="list-style-type: none">(1) The person to whom the non-disturbance notice is issued.(2) A health and safety representative who represents an employee, or represents a person mentioned in section 44(1)(e) or 48(1)(e), whose interests are affected by the decision.(3) An employee whose interests are affected by the decision.(4) An employer whose interests are affected by the decision.
8.	Section 111(1) (issue of an improvement notice)	<ol style="list-style-type: none">(1) The person to whom the improvement notice is issued.(2) A health and safety representative who represents an employee, or represents a person mentioned in section 44(1)(e) or 48(1)(e), whose interests are affected by the decision.(3) An employee whose interests are affected by the decision.(4) An employer whose interests are affected by the decision.

Occupational Health and Safety Act 2004
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<i>Item</i>	<i>Provision under which reviewable decision is made</i>	<i>Eligible person in relation to reviewable decision</i>
9.	Section 111(3)(a) (certification that matters the subject of an improvement notice have been remedied)	<ul style="list-style-type: none"> (1) The person to whom the improvement notice was issued. (2) A health and safety representative who represents an employee, or represents a person mentioned in section 44(1)(e) or 48(1)(e), whose interests are affected by the decision. (3) An employee whose interests are affected by the decision. (4) An employer whose interests are affected by the decision.
10.	Section 112(1) (issue of a prohibition notice)	<ul style="list-style-type: none"> (1) The person to whom the prohibition notice is issued. (2) A health and safety representative who represents an employee, or represents a person mentioned in section 44(1)(e) or 48(1)(e), whose interests are affected by the decision. (3) An employee whose interests are affected by the decision. (4) An employer whose interests are affected by the decision. (5) A health and safety representative whose direction under section 74 to cease work gave rise to the decision.

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<i>Item</i>	<i>Provision under which reviewable decision is made</i>	<i>Eligible person in relation to reviewable decision</i>
11.	Section 112(1) (certification that matters the subject of a prohibition notice have been remedied)	<ol style="list-style-type: none">(1) The person to whom the prohibition notice was issued.(2) A health and safety representative who represents an employee, or represents a person mentioned in section 44(1)(e) or 48(1)(e), whose interests are affected by the decision.(3) An employee whose interests are affected by the decision.(4) An employer whose interests are affected by the decision.(5) A health and safety representative whose direction under section 74 to cease work gave rise to the decision.
12.	Section 114 (variation or cancellation of a non-disturbance notice, improvement notice or prohibition notice)	<ol style="list-style-type: none">(1) The person to whom the notice concerned was issued.(2) A health and safety representative who represents an employee, or represents a person mentioned in section 44(1)(e) or 48(1)(e), whose interests are affected by the decision.(3) An employee whose interests are affected by the decision.(4) An employer whose interests are affected by the decision.(5) In the case of a prohibition notice, a health and safety representative whose direction under section 74 to cease work gave rise to the notice.

128 Internal review

- (1) An eligible person in relation to a reviewable decision, other than a decision made by the Authority, may apply to the Authority for review of the decision within—
 - (a) 14 days after the day on which the decision first came to the eligible person's notice; or
 - (b) such longer period as the Authority allows.
- (2) The application must be in the form approved (in writing) by the Authority.
- (3) If an application is made to the Authority in accordance with this section, the Authority must make a decision—
 - (a) to affirm or vary the reviewable decision; or
 - (b) to set aside the reviewable decision and substitute another decision that the Authority considers appropriate.
- (4) The Authority must give a written notice to the applicant setting out—
 - (a) the Authority's decision under subsection (3) and the reasons for the decision; and
 - (b) the findings on material questions of fact that led to the decision, referring to the evidence or other material on which those findings were based—

and must do so within 14 days after the application is made or, if the reviewable decision was made under section 111(3)(a) or 112(1), within 7 days after the application is made.
- (5) If the Authority has not notified an applicant of a decision in accordance with subsection (4), the Authority is taken to have made a decision to affirm the reviewable decision.

- (6) An application under this section does not affect the operation of the reviewable decision or prevent the taking of any action to implement it unless the Authority, on its own initiative or on the application of the applicant for review, stays the operation of the decision pending the determination of the review.
- (7) The Authority must make a decision on an application for a stay within 24 hours after the making of the application.
- (8) If the Authority has not made a decision in accordance with subsection (7), the Authority is taken to have made a decision to grant a stay.
- (9) The Authority may attach any conditions to a stay of the operation of a reviewable decision that it considers appropriate.

129 Review by the Tribunal

- (1) A person may apply to the Tribunal for review of—
 - (a) a reviewable decision made by the Authority; or
 - (b) a decision made, or taken to have been made, by the Authority under section 128 in respect of a reviewable decision (including a decision concerning a stay of the operation of the reviewable decision)—if the person is an eligible person in relation to the reviewable decision.
- (2) The application must be made—
 - (a) if the decision is to forfeit a thing (including a document) seized under Part 9, within 28 days after the day on which the decision first came to the applicant's notice; or

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- (b) in the case of any other decision, within 14 days after the day on which the decision first came to the applicant's notice; or
- (c) if the Authority is required by the **Victorian Civil and Administrative Tribunal Act 1998** to give the applicant a statement of reasons, within 14 days after the day on which the applicant is given the statement—
- whichever period ends last.
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PART 11—LEGAL PROCEEDINGS

Division 1—General matters

130 Proceedings may be brought by the Authority or inspectors

- (1) Proceedings for an offence against this Act may be brought only by—
 - (a) the Authority; or
 - (b) an inspector with the written authorisation of the Authority (either generally or in a particular case).
- (2) An authorisation under subsection (1)(b) is sufficient authority to continue proceedings in any case where the court amends the charge-sheet, warrant or summons.
- (3) An inspector who brings proceedings may conduct the proceedings before the court.
- (4) The Authority must issue, and publish in the Government Gazette, general guidelines for or with respect to the prosecution of offences under this Act.
- (5) Nothing in this section affects the ability of the Director of Public Prosecutions to bring proceedings for an indictable offence against this Act.

S. 130(2)
amended by
No. 68/2009
s. 97(Sch.
item 90.25).

131 Procedure if prosecution is not brought

- (1) If—
 - (a) a person considers that the occurrence of an act, matter or thing constitutes an offence against this Act; and
 - (b) no prosecution has been brought in respect of the occurrence of the act, matter or thing within 6 months of that occurrence—

the person may request in writing that the Authority bring a prosecution.

- (2) Within 3 months after the Authority receives a request it must—
 - (a) investigate the matter; and
 - (b) following the investigation, advise (in writing) the person whether a prosecution has been or will be brought or give reasons why a prosecution will not be brought.
- (3) If the Authority advises the person that a prosecution will not be brought, the Authority must refer the matter to the Director of Public Prosecutions if the person requests (in writing) that the Authority do so.
- (4) The Director of Public Prosecutions must consider the matter and advise (in writing) the Authority whether or not the Director considers that a prosecution should be brought.
- (5) The Authority must ensure a copy of the advice is sent to the person who made the request and, if the Authority declines to follow advice from the Director of Public Prosecutions to bring proceedings, the Authority must give the person written reasons for its decision.
- (6) The Authority must include in its annual report, and publish on its website, a statement setting out—
 - (a) the number of requests received by the Authority under subsection (1); and
 - (b) the number of cases in which the Authority has advised under subsection (2)(b) that a prosecution has been or will be brought, or will not be brought; and

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- (c) the number of cases in which the Director of Public Prosecutions has advised under subsection (4) that a prosecution should be brought or should not be brought.

132 Limitation period for prosecutions

Proceedings for an indictable offence against this Act may be brought—

- (a) within 2 years after the offence is committed or the Authority becomes aware the offence was committed; or
- (b) at any time with the written authorisation of the Director of Public Prosecutions.

133 Judicial notice of Minister's signature etc.

All courts must take judicial notice of the signature of—

- (a) the Minister; or
- (b) the chief executive of the Authority (appointed under section 22 of the **Accident Compensation Act 1985**); or
- (c) the Chair of the Authority's Board of Management—

on each document authorised or required to be signed by the Minister, chief executive or Chair (as the case may be) for the purposes of this Act or the regulations.

134 Evidence of certain matters

In proceedings for an offence against this Act or the regulations—

- (a) it is sufficient to allege that any place, whether or not in a building or structure, is a workplace within the meaning of this Act without further allegation; and

- (b) if the age of a person is material and there is insufficient evidence of the person's actual age, the court may have regard to his or her apparent age.

Division 2—Sentencing for offences

135 Adverse publicity orders

- (1) If a court convicts a person, or finds a person guilty, of an offence against this Act or the regulations the court may make an order (an *adverse publicity order*) in relation to the offender requiring the offender—
- (a) to take either or both of the following actions within the period specified in the order—
- (i) to publicise, in the way specified in the order, the offence, its consequences, the penalty imposed and any other related matter;
- (ii) to notify a specified person or specified class of persons, in the way specified in the order, of the offence, its consequences, the penalty imposed and any other related matter; and
- (b) to give the Authority, within 7 days after the end of the period specified in the order, evidence that the action or actions were taken by the offender in accordance with the order.
- (2) The court may make an adverse publicity order on its own initiative or on the application of the prosecutor.
- (3) If the offender fails to give evidence to the Authority in accordance with subsection (1)(b), the Authority, or a person authorised in writing by the Authority, may take the action or actions specified in the order.

- (4) However, if—
- (a) the offender gives evidence to the Authority in accordance with subsection (1)(b); and
 - (b) despite that evidence, the Authority is not satisfied that the offender has taken the action or actions specified in the order in accordance with the order—

the Authority may apply to the court for an order authorising the Authority, or a person authorised in writing by the Authority, to take the action or actions.

- (5) If the Authority or a person authorised in writing by the Authority takes an action or actions in accordance with subsection (3) or an order under subsection (4), the Authority is entitled to recover from the offender, by action in a court of competent jurisdiction, an amount in respect of the reasonable expenses of taking the action or actions as a debt due to the Authority.
- (6) The court must not make an adverse publicity order unless it is satisfied that the costs of complying with the order do not exceed the maximum penalty amount that the court may impose on the offender for the offence concerned.
- (7) The court may make an adverse publicity order in relation to an offender in addition to or instead of—
- (a) imposing a penalty on the offender; or
 - (b) making any other order that the court may make in relation to the offence.

136 Orders to undertake improvement projects

- (1) If a court convicts a person or finds a person guilty of an offence against this Act or the regulations the court may make an order requiring the offender to undertake a specified project for

the general improvement of occupational health, safety and welfare within the period specified in the order.

- (2) The order may specify conditions that must be complied with in undertaking the specified project.
- (3) The court must not make an order under this section unless it is satisfied that the costs of complying with the order do not exceed the maximum penalty amount that the court may impose on the offender for the offence concerned.
- (4) The court may make an order under this section in relation to an offender in addition to or instead of—
 - (a) imposing a penalty on the offender; or
 - (b) making any other order that the court may make in relation to the offence.

137 Release on the giving of a health and safety undertaking

- (1) If a court convicts a person or finds a person guilty of an offence against this Act or the regulations the court may (with or without recording a conviction) adjourn the proceeding for a period of up to 2 years and make an order for the release of the offender on the offender giving an undertaking with specified conditions.
- (2) An undertaking must specify the following conditions—
 - (a) that the offender attends before the court if called on to do so during the period of the adjournment and, if the court so specifies, at the time to which the further hearing is adjourned;

S. 137(2)(a)
amended by
No. 68/2009
s. 97(Sch.
item 90.26).

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- (b) that the offender does not commit, during the period of the adjournment, any offence against this Act, the **Equipment (Public Safety) Act 1994** or the **Dangerous Goods Act 1985**;
- (c) that the offender observes any special conditions imposed by the court.
- (3) Without limiting subsection (2)(c), the court may impose on an offender who is an employer special conditions that the offender—
- (a) engage a consultant, who is approved in writing by the Authority, to advise on or assist with occupational health and safety matters; and
- (b) develop and implement a systematic approach to managing risks to health or safety that arise or may arise in the conduct of the offender's undertaking; and
- (c) arrange for the carrying out of an audit of the offender's undertaking in relation to health and safety by an independent person who is approved in writing by the Authority.
- (4) An offender who has given an undertaking under this section may be called on to attend before the court—
- (a) by order of the court; or
- (b) by notice issued by the proper officer (within the meaning of section 72(4) of the **Sentencing Act 1991**) of the court.
- (5) An order or notice under subsection (4) must be served on the offender not less than 4 days before the time specified in it for the attendance.
- S. 137(2)(b) amended by No. 66/2008 s. 32(2).
- S. 137(4) amended by No. 68/2009 s. 97(Sch. item 90.27).
- S. 137(5) amended by No. 68/2009 s. 97(Sch. item 90.28).

- (6) If the court is satisfied at the time to which a further hearing of a proceeding is adjourned that the offender has observed the conditions of the undertaking, it must discharge the offender without any further hearing of the proceeding.
- (7) The court may make an order under this section in relation to an offender in addition to or instead of—
 - (a) imposing a penalty on the offender; or
 - (b) making any other order that the court may make in relation to the offence.

S. 138
(Heading)
amended by
No. 65/2011
s. 107(Sch.
item 10.1).
S. 138
amended by
No. 65/2011
s. 107(Sch.
items 10.2,
10.3).

138 Variation or contravention of orders under section 137

Section 78 and Part 3C of the **Sentencing Act 1991** (and any definitions in that Act of terms used in that section or Part) apply to an order under section 137 of this Act for the release of an offender as though they were incorporated into this Act and as though—

S. 138(ab)
inserted by
No. 65/2011
s. 107(Sch.
item 10.4).

- (a) a reference to Subdivision (2) or (3) were instead a reference to section 137 of this Act; and
- (ab) a reference to section 72 or 75 were a reference to section 137; and
- (b) a reference to a prescribed person, a member of a prescribed class of persons, the informant or a police prosecutor were instead a reference to the Authority; and

S. 138(c)
amended by
No. 65/2011
s. 107(Sch.
item 10.5).

- (c) the reference in section 83AC of the **Sentencing Act 1991** to a level 10 fine were instead a reference to a fine not exceeding 10 penalty units for a natural person or 50 penalty units for a body corporate; and

- (d) any other necessary modifications were made.

Division 3—Infringement notices

139 Infringement notices

- (1) The regulations may provide that a person may be served with an infringement notice as an alternative to a prosecution for an offence (other than an indictable offence) against this Act or the regulations that is prescribed by the regulations for the purposes of this section.

- (1A) An offence referred to in subsection (1) for which an infringement notice may be served is an infringement offence within the meaning of the **Infringements Act 2006**.

S. 139(1A) inserted by No. 32/2006 s. 94(Sch. item 36(1)).

- (2) An infringement notice must specify a penalty for the alleged offence that does not exceed the lesser of—

- (a) 10 penalty units; or
(b) one fifth of the maximum penalty that could be imposed by a court for the offence.

- (3) The regulations must prescribe the person or class of persons who may issue infringement notices.

S. 139(3) substituted by No. 32/2006 s. 94(Sch. item 36(2)).

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S. 139(4) repealed by No. 32/2006 s. 94(Sch. item 36(3)).

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Ss 140–142 repealed by No. 32/2006 s. 94(Sch. item 36(3)).

Division 4—Offences by bodies corporate

143 Imputing conduct to bodies corporate

For the purposes of this Act and the regulations, any conduct engaged in on behalf of a body corporate by an employee, agent or officer (within the meaning given by section 9 of the Corporations Act) of the body corporate acting within the actual or apparent scope of his or her employment, or within his or her actual or apparent authority, is conduct also engaged in by the body corporate.

144 Liability of officers of bodies corporate

- (1) If a body corporate (including a body corporate representing the Crown) contravenes a provision of this Act or the regulations and the contravention is attributable to an officer of the body corporate failing to take reasonable care, the officer is guilty of an offence and liable to a fine not exceeding the maximum fine for an offence constituted by a contravention by a natural person of the provision contravened by the body corporate.
- (2) An offence against subsection (1) is summary or indictable in nature according to whether the offence constituted by the contravention by the body corporate is summary or indictable.
- (3) In determining whether an officer of a body corporate is guilty of an offence, regard must be had to—
 - (a) what the officer knew about the matter concerned; and
 - (b) the extent of the officer's ability to make, or participate in the making of, decisions that affect the body corporate in relation to the matter concerned; and

- (c) whether the contravention by the body corporate is also attributable to an act or omission of any other person; and
 - (d) any other relevant matter.
- (4) An officer of a body corporate may be convicted or found guilty of an offence in accordance with subsection (1) whether or not the body corporate has been convicted or found guilty of the offence committed by it.
- (5) An officer of a body corporate (including a body corporate representing the Crown) who is a volunteer is not liable to be prosecuted under this section for anything done or not done by him or her as a volunteer.

Notes

- 1 **Officer** of a body corporate includes a person who makes or participates in the making of decisions that affect the whole or a substantial part of the body corporate's business and a person who has the capacity to affect significantly the body corporate's financial standing (see section 5).
- 2 For **volunteer**, see section 5.

Division 5—Offences by partnerships and unincorporated bodies or associations

145 Liability of officers of partnerships and unincorporated bodies or associations

- (1) Subject to subsection (2), if—
- (a) this Act imposes a duty on a person or provides that a person is guilty of an offence; and

- (b) the person is a partnership or an unincorporated body or association (including a partnership or an unincorporated body or association representing the Crown)—

the reference to the person is taken to be instead a reference to each officer of the partnership, body or association (as the case may be).

- (2) If an offence against this Act is committed by an officer of a partnership or an unincorporated body or association because of the effect of subsection (1), the officer is only guilty of the offence if the commission of the offence is attributable to the officer failing to take reasonable care.
- (3) The penalty to which an officer of a partnership or an unincorporated body or association is liable for an offence committed by him or her because of the effect of subsection (1) is a fine not exceeding the maximum fine that could be imposed by a court on a natural person found guilty of the same offence committed at the same time (otherwise than because of the effect of subsection (1)).
- (4) In determining whether an officer of a partnership or unincorporated body or association is guilty of an offence, regard must be had to—
- (a) what the officer knew about the matter concerned; and
 - (b) the extent of the officer's ability to make, or participate in the making of, decisions that affect the partnership, body or association in relation to the matter concerned; and
 - (c) whether the commission of the offence is also attributable to an act or omission of any other person; and
 - (d) any other relevant matter.

- (5) An officer of a partnership or unincorporated body or association who is a volunteer is not liable to be prosecuted under this section for anything done or not done by him or her as a volunteer.

Notes

- 1 **Officer** of a partnership or unincorporated body or association includes a person who makes or participates in the making of decisions that affect the whole or a substantial part of the business of the partnership, body or association and a person who has the capacity to affect significantly the financial standing of the partnership, body or association (see section 5).
- 2 For **volunteer**, see section 5.

Division 6—Proceedings against the Crown

146 Responsible agency for the Crown

- (1) If the Crown is to be served with an infringement notice, or proceedings are brought against the Crown, for an offence against this Act or the regulations the responsible agency in respect of the offence may be specified in the infringement notice or any document initiating, or relating to, the proceedings (as the case may be).
- (2) In this section, the **responsible agency** in respect of an offence is the agency of the Crown—
 - (a) whose acts or omissions are alleged to constitute the offence; or
 - (b) if that agency has ceased to exist, that is the successor of that agency; or
 - (c) if that agency has ceased to exist and there is no clear successor, that the court declares to be the responsible agency.

- (3) The responsible agency in respect of an offence is entitled to act in proceedings against the Crown for the offence and, subject to any relevant rules of court, the procedural rights and obligations of the Crown as the accused in the proceedings are conferred or imposed on the responsible agency.
- (4) The person prosecuting the offence may change the responsible agency during the proceedings with the court's leave.

147 Infringement and other notices may be issued to the Crown

- (1) The Crown in any capacity may be issued with an infringement notice for an offence against this Act or the regulations.

Note

For infringement notices generally, see Division 3.

- (2) If a notice is to be issued to the Crown under Division 5 of Part 7 or Division 8 of Part 9 by a health and safety representative or inspector, the notice may be issued to the agency of the Crown that would be the responsible agency under section 146 if the Crown were prosecuted for an offence of contravening the notice.

148 Proceedings against successors to public bodies

- (1) In this section, *public body* means—
 - (a) a body corporate representing the Crown; or
 - (b) a State owned enterprise or reorganising body (within the meaning of the **State Owned Enterprises Act 1992**); or
 - (c) a Council (within the meaning of the **Local Government Act 1989**); or
 - (d) a public entity (within the meaning of the **Public Administration Act 2004**).

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- (2) Proceedings for an offence against this Act or the regulations that were instituted against a public body before its dissolution, or that could have been instituted against a public body if not for its dissolution, may be continued or instituted against its successor if the successor is a public body.
 - (3) An infringement notice served on a public body for an offence against this Act or the regulations is taken to be an infringement notice served on its successor if the successor is a public body.
 - (4) Similarly, any penalty paid by a public body in respect of an infringement notice is taken to be a penalty paid by its successor if the successor is a public body.
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PART 12—COMPLIANCE CODES

149 Compliance codes

- (1) For the purpose of providing practical guidance to persons who have duties or obligations under this Act or the regulations, the Minister may make an order approving a compliance code.
- (2) A compliance code may apply, adopt or incorporate any matter contained in a document formulated, issued or published by a person or body whether—
 - (a) with or without modification; or
 - (b) as in force at a particular time or from time to time.
- (3) The Minister may make an order approving the variation of a compliance code or revoking the approval of a compliance code.
- (4) An order approving a compliance code, or a variation or revocation order, takes effect when notice of it is published in the Government Gazette or on such later date as is specified in the order.

Note

The Minister's power to make an order approving a compliance code, or a variation order, is subject to disallowance by the Parliament (see section 151).

- (5) As soon as practicable after making an order approving a compliance code, or a variation or revocation order, the Minister must ensure that notice of the making of the order is published in the Government Gazette and a newspaper circulating generally throughout the State.

- (6) The Minister must ensure that a copy of—
- (a) each compliance code that is currently approved; and
 - (b) each document applied, adopted or incorporated (to any extent) by a compliance code—

is available for inspection by members of the public without charge at the office of the Authority during normal business hours.

150 Effect of compliance codes

A failure to comply with a compliance code does not give rise to any civil or criminal liability.

Note

A person who complies with a compliance code may, however, be taken to have complied with this Act (see section 152).

151 Disallowance of certain compliance code orders

- (1) The Minister's power to make an order approving a compliance code, or a variation order, under section 149 is subject to the order being disallowed by the Parliament.
- (2) Section 15 and Part 5 of the **Subordinate Legislation Act 1994** apply for the purposes of subsection (1) as though—
 - (a) an order were a statutory rule (within the meaning of that Act); and
 - (b) notice of the making of the statutory rule had been published in the Government Gazette when notice of the order or variation order (as the case may be) was published in the Government Gazette.

PART 13—OTHER MATTERS

S. 151A
inserted by
No. 28/2005
s. 29.

151A Contributions by non-WorkCover employers to the WorkCover Authority Fund

- (1) The Authority must determine the amount of contributions payable into the WorkCover Authority Fund under section 32 of the **Accident Compensation Act 1985** by non-WorkCover employers to be applied towards the costs and expenses incurred by the Authority for the provision of occupational health, safety and welfare regulation and related education and prevention services.
- (2) The amount is to be determined in accordance with the formula—

$$\frac{A}{B} \times [C - (D + E + F)] \times G \text{ —}$$

where—

"A" is the rateable remuneration paid or payable by the non-WorkCover employer during the preceding financial year calculated as if the non-WorkCover employer were an employer liable to pay the premium for a WorkCover insurance policy under the **Accident Compensation (WorkCover Insurance) Act 1993**;

"B" is the sum of the total rateable remuneration paid or payable—

- (i) by all employers liable to pay the premium for a WorkCover insurance policy under the **Accident Compensation (WorkCover Insurance) Act 1993** during the preceding financial year; and

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- (ii) by all self-insurers calculated as if each self-insurer were an employer liable to pay the premium for a WorkCover insurance policy under the **Accident Compensation (WorkCover Insurance) Act 1993** during the preceding financial year; and
 - (iii) by all non-WorkCover employers calculated as if each non-WorkCover employer were an employer liable to pay the premium for a WorkCover insurance policy under the **Accident Compensation (WorkCover Insurance) Act 1993** during the preceding financial year;

"C" is the sum of—

- (i) the total of the costs incurred by the Authority in the preceding quarter referred to in paragraphs (d), (e), (f), (fa) and (i) of section 32(4) of the **Accident Compensation Act 1985**; and
- (ii) the costs incurred by the Authority in the preceding quarter in the administration of Division 2 of Part III of the **Accident Compensation Act 1985**;

"D" is the sum of the costs incurred by the Authority during the preceding quarter, being the costs—

- (i) referred to in section 32(4)(d) of the **Accident Compensation Act 1985**; and
- (ii) the costs incurred in the administration of Divisions 2 and 3 of Part III of the **Accident Compensation Act 1985**;

"E" is, subject to any adjustment in accordance with subsection (3), the sum of the costs incurred by the Authority in the preceding quarter related to—

- (i) the operation and management of its rehabilitation, compensation and insurance functions;
- (ii) the administration, operation, management and maintenance of the Authority's central computer network used by authorised agents;
- (iii) actuarial services provided to the Authority;
- (iv) the administration and support of the operation and management of its rehabilitation, compensation and insurance functions (other than costs referred to in subparagraphs (ii) and (iii));

"F" is the sum of the costs, including the administration costs, incurred by the Authority in the preceding quarter directly related to the administration and support of public safety activities and operations;

"G" is 60% or, if another percentage, not exceeding 100%, is prescribed by the regulations for the purposes of this section, the prescribed percentage.

- (3) The costs referred to in "E" in subsection (2) are to be assessed for each quarter and, following the annual audit of the Authority's financial statements, any necessary adjustments made to the total of "E" in the next quarterly contribution payable.

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- (4) The contribution by a non-WorkCover employer—
- (a) is payable on 1 August, 1 November, 1 February and 1 May in each year; and
 - (b) must be paid within 14 days of the due date.
- (5) If a contribution is not paid by the due date, the amount of the contribution together with interest at the prescribed rate and a surcharge of \$100 per day until the contribution is paid may be recovered by the Authority as a civil debt recoverable summarily.
- (6) A non-WorkCover employer must at the intervals specified by the Authority submit to the Authority—
- (a) a return in the form approved by the Authority; and
 - (b) a statutory declaration in support of the information provided in the return—
- to enable the Authority to determine the amount of contributions payable.
- (7) A non-WorkCover employer who fails to comply with subsection (6) is guilty of an offence against this Act and liable to a penalty for each day during which the default continues of—
- (a) 1 penalty unit in the case of a natural person;
 - (b) 5 penalty units in the case of a body corporate.

s. 151B

S. 151B
inserted by
No. 28/2005
s. 29.

151B Provision of return by non-WorkCover employers

- (1) The Authority must issue instructions specifying the information relating to—
 - (a) employment; and
 - (b) occupational health, safety and welfare matters—

required to be provided by a non-WorkCover employer at the intervals specified by the Authority for the purposes of this section.

- (2) A non-WorkCover employer must within the period of 30 days after the end of each specified interval submit to the Authority a return in the form approved by the Authority containing the information required by the instructions issued under subsection (1).
- (3) A non-WorkCover employer who fails to comply with subsection (2) is guilty of an offence against this Act and liable to a penalty for each day during which the default continues of—
 - (a) 1 penalty unit in the case of a natural person;
 - (b) 5 penalty units in the case of a body corporate.

S. 151C
inserted by
No. 28/2005
s. 29.

151C Authority may require non-WorkCover employer to provide further information

- (1) The Authority may by notice in writing require a non-WorkCover employer to provide to the Authority or a person specified in the notice information which the Authority considers is reasonably required for the purposes of this Act in respect of any activity as an employer or an occupational health, safety and welfare matter as is specified in the notice.

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- (2) A non-WorkCover employer must comply with a notice received under subsection (1) within the period of 30 days after the notice is received or within any further period as may be agreed between the Authority and the non-WorkCover employer.
 - (3) A non-WorkCover employer who fails to comply with subsection (2) is guilty of an offence against this Act and liable to a penalty for each day during which the default continues of—
 - (a) 1 penalty unit in the case of a natural person;
 - (b) 5 penalty units in the case of a body corporate.

151D Authority may require information from non-WorkCover employers

S. 151D
inserted by
No. 28/2005
s. 29.

- (1) The Authority may by notice in writing require a non-WorkCover employer to provide to the Authority within 30 days of the date of the notice such information as the Authority considers is reasonably required for the purposes of this Act as to the means by which data relating to any of its activities as an employer is collected, collated, stored or retrieved.
- (2) A non-WorkCover employer must comply with a notice received under subsection (1) within the period of 30 days after the notice is received or within any further period as may be agreed between the Authority and the non-WorkCover employer.
- (3) A non-WorkCover employer who fails to comply with subsection (2) is guilty of an offence against this Act and liable to a penalty for each day during which the default continues of—

s. 151E

- (a) 1 penalty unit in the case of a natural person;
- (b) 5 penalty units in the case of a body corporate.

S. 151E
inserted by
No. 28/2005
s. 29.

151E Authority may require non-WorkCover employer to facilitate the provision of information

- (1) The Authority may by notice in writing require a non-WorkCover employer to make any changes to the manner in which the non-WorkCover employer collects, collates, stores, retrieves or transfers data as are reasonably necessary to enable the non-WorkCover employer to comply with sections 151A, 151B and 151C.
- (2) A non-WorkCover employer must comply with a notice received under subsection (1) within the period of 30 days after the notice is received or within any further period as may be agreed between the Authority and the non-WorkCover employer.
- (3) A non-WorkCover employer who fails to comply with subsection (2) is guilty of an offence against this Act and liable to a penalty for each day during which the default continues of—
 - (a) 1 penalty unit in the case of a natural person;
 - (b) 5 penalty units in the case of a body corporate.

S. 151F
inserted by
No. 28/2005
s. 29.

151F Application of sections 151A to 151E

Sections 151A to 151E apply in relation to a non-WorkCover employer as from the end of, and in respect of, the first full month after the exit date.

152 Effect of compliance with regulations or compliance codes

If—

- (a) the regulations or a compliance code make provision for or with respect to a duty or obligation imposed by this Act or the regulations; and
- (b) a person complies with the regulations or compliance code to the extent that it makes that provision—

the person is, for the purposes of this Act and the regulations, taken to have complied with this Act or the regulations in relation to that duty or obligation.

153 Offence to give false or misleading information

- (1) A person must not give information in complying or purportedly complying with this Act or the regulations that the person knows to be false or misleading in a material particular.

Penalty: 240 penalty units for a natural person;
1200 penalty units for a body corporate.

- (2) A person must not produce a document in complying or purportedly complying with this Act or the regulations that the person knows to be false or misleading in a material particular without—

- (a) indicating the respect in which it is false or misleading; and
- (b) if practicable, providing correct information.

Penalty: 240 penalty units for a natural person;
1200 penalty units for a body corporate.

154 Protection against self-incrimination

- (1) A natural person may refuse or fail to give information or do any other thing that the person is required to do by or under this Act or the regulations if giving the information or doing the other thing would tend to incriminate the person.
- (2) However, subsection (1) does not apply to—
 - (a) the production of a document or part of a document that the person is required by this Act or the regulations to produce; or
 - (b) the giving of a person's name or address in accordance with section 119.

S. 155
(Heading)
amended by
No. 69/2009
s. 54(Sch. Pt 1
item 40.2).

155 Legal professional privilege and client legal privilege not affected

Nothing in this Act or the regulations—

S. 155(a)
amended by
No. 69/2009
s. 54(Sch. Pt 1
item 40.3).

- (a) entitles or requires a person to disclose information that is the subject of legal professional privilege or client legal privilege; or

S. 155(b)
amended by
No. 69/2009
s. 54(Sch. Pt 1
item 40.3).

- (b) affects the law or practice relating to legal professional privilege or client legal privilege.

156 Delegation by the Minister

- (1) The Minister may, in writing, delegate to any person all or any of his or her functions or powers under this Act or the regulations (other than this power of delegation).
- (2) In the performance of a delegated function or exercise of a delegated power the delegate is subject to the Minister's directions.

157 Responsibility for activities carried out under the Offshore Petroleum and Greenhouse Gas Storage Act

S. 157
(Heading)
amended by
No. 10/2010
s. 800(Sch. 6
item 10.1).

- (1) In this section, *relevant Minister* means the Minister for the time being administering the **Offshore Petroleum and Greenhouse Gas Storage Act 2010**.
- (2) Despite anything to the contrary in this Act but subject to subsection (4), the relevant Minister—
- (a) has direct and primary concern and responsibility for the administration of this Act with respect to activities carried out under the Offshore Petroleum and Greenhouse Gas Storage Act 2006 of the Commonwealth or the **Offshore Petroleum and Greenhouse Gas Storage Act 2010**; and
- (b) may exercise for that purpose all the powers and functions of the Minister or Authority under this Act or the regulations.
- (3) For the purposes only of subsection (2), this section applies as if a reference in this Act or the regulations—
- (a) to the Minister were a reference to the relevant Minister; and
- (b) to the Authority were a reference to the Secretary to the Department of Primary Industries; and
- (c) to an officer or employee of the Authority were a reference to a person employed under Part 3 of the **Public Administration Act 2004** by the Department Head (within the meaning of that Act) of the Department of Primary Industries.

S. 157(1)
amended by
No. 10/2010
s. 800(Sch. 6
item 10.2).

S. 157(2)(a)
amended by
No. 10/2010
s. 800(Sch. 6
item 10.3).

- (4) Subsection (2) does not apply to any power, function or responsibility of the Minister relating to compliance codes or to the making of regulations.

158 Regulations

- (1) The Governor in Council may make regulations for or with respect to the following—
- (a) the way in which duties or obligations imposed by this Act or the regulations are performed;
 - (b) regulating or prohibiting specified activities or a specified class of activities—
 - (i) at workplaces or a specified class of workplaces; or
 - (ii) by a specified class of persons on whom duties or obligations are imposed by this Act—
to eliminate or reduce risks to health or safety;
 - (c) prescribing any matters with respect to licensing, registration, qualifications, permits or certificates of competency referred to in Part 6 (including providing for exemptions, the authorisation of persons as trainers and the examination of applicants for licences, permits or certificates of competency);
 - (d) prescribing (whether or not by reference to Part 10) the circumstances and way in which a decision made under the regulations with respect to a licence, registration, qualifications, permit or certificate of competency referred to in Part 6 may be reviewed;

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- (e) regulating or requiring the taking of any action to avoid an incident at a workplace or in the course of conducting an undertaking of an employer or self-employed person;
 - (f) regulating, requiring or prohibiting the taking of any action in the event of an incident at a workplace or in the course of conducting an undertaking of an employer or self-employed person;
 - (g) regulating or requiring—
 - (i) the examination, testing, maintenance or repair of plant; or
 - (ii) the examination, testing, analysis or labelling of any substance;
 - (h) regulating or requiring the provision and use of protective clothing or equipment, or rescue equipment, in prescribed circumstances;
 - (i) prescribing standards relating to the use of or exposure to any physical, biological, chemical or psychological hazard;
 - (j) regulating or requiring the provision by employers of prescribed facilities for the welfare of persons at the workplace;
 - (k) requiring records of prescribed activities, matters or things to be kept by prescribed persons;
 - (l) requiring notice of prescribed activities, matters or things to be given to the Authority, an inspector or other prescribed person;
 - (m) prescribing exemptions of specified persons or specified classes of persons from complying with any of the regulations on the terms and conditions (if any) prescribed;

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- (n) allowing the Authority to provide exemptions from complying with any of the regulations on the terms and conditions (if any) prescribed or, if the regulations allow, on the terms and conditions (if any) determined by the Authority;
 - (o) prescribing fees for doing any act or providing any service for the purposes of this Act or the regulations and prescribing the circumstances and way in which fees are to be refunded;
 - (p) prescribing a penalty for any contravention of the regulations not exceeding—
 - (i) 100 penalty units for a natural person; and
 - (ii) 500 penalty units for a body corporate, or 5 times the penalty prescribed for such a contravention by a natural person, whichever is the lesser;
 - (q) any other matter or thing required or permitted by this Act to be prescribed or that is necessary to be prescribed to give effect to this Act.
- (2) The regulations may—
- (a) be of general or limited application; or
 - (b) differ according to differences in time, place or circumstance; or
 - (c) leave any matter or thing to be, from time to time, determined, applied or approved by the Authority, an inspector or any other prescribed person or body of persons; or

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- (d) apply, adopt or incorporate any matter contained in any document formulated, issued or published by a person or body whether—
- (i) with or without modification; or
 - (ii) as in force at a particular time or from time to time.
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PART 14—REPEAL OF OLD ACT AND TRANSITIONAL PROVISIONS

Division 1—Repeal of Occupational Health and Safety Act 1985

159 Repeal

The **Occupational Health and Safety Act 1985** is repealed.

Division 2—Transitional provisions

160 Definition of *old Act*

In this Division, *old Act* means the **Occupational Health and Safety Act 1985**.

161 No effect on Interpretation of Legislation Act 1984

Nothing in this Part limits or otherwise affects the operation of the **Interpretation of Legislation Act 1984**.

162 Limitation on duties of designers of buildings or structures

The duties imposed by section 28 on a person who designs all or part of a building or structure do not apply in respect of any part of a building or structure the design of which is started before that section commences.

163 Continuation of designated work groups

A designated work group that was determined under the old Act and in existence immediately before the commencement of Part 7 of this Act is, on and after that commencement, taken to be a designated work group established under Division 1 of that Part.

164 Continuation of health and safety representatives

- (1) A person who, immediately before the commencement of Part 7 of this Act, was a health and safety representative for a designated work group under section 30 of the old Act continues, on and after that commencement, as a health and safety representative for that designated work group for the purposes of this Act and the regulations until the earlier of—
 - (a) 3 years after that commencement; or
 - (b) the person ceases to hold office because of section 55(2) of this Act.
- (2) Despite the repeal of the old Act, the duty imposed by section 31(2)(c) of the old Act on an employer continues in existence on and after that commencement until the commencement of Part 4 of this Act as though the old Act had not been repealed.
- (3) For the purposes of subsection (2), any other provision of the old Act (including, but not limited to, Part VII) necessary to give effect to the provision continued in existence by force of that subsection also continues to apply in relation to that provision until the commencement of Part 4 of this Act.

165 Continuation of health and safety committees

A health and safety committee that was established under section 37 of the old Act and in existence immediately before the commencement of Part 7 of this Act is, on and after that commencement, taken to be a health and safety committee established under that Part.

166 Continuation of inspectors

- (1) A person who, immediately before the commencement of Part 9 of this Act, held office as an inspector under Part 5 of the old Act is, on and after that commencement, taken to be an inspector appointed under this Act.
- (2) A certificate of appointment or identification card that was issued to such a person under section 38 of the old Act is, on and after the commencement of Part 9 of this Act, taken to be a certificate of appointment issued to the person under section 95 of this Act or an identity card issued to the person under section 96 of this Act (as the case may be).

167 Inspectors' powers relating to offences committed before commencement

The powers of an inspector under Part 9 of this Act (including the powers to issue notices under Division 8 of that Part) and any limitations or conditions on those powers apply, on and after the commencement of that Part, as though a reference in that Part to—

- (a) a contravention of a provision of this Act or the regulations included a reference to a contravention of the old Act or the regulations under the old Act; and
- (b) an offence against this Act or the regulations included a reference to an offence against the old Act or the regulations under the old Act.

168 Use of codes of practice in proceedings

Despite the repeal of the old Act, section 56 of that Act continues to apply, on and after that repeal, to proceedings for an offence against the old Act or the regulations under the old Act.

169 Treatment of improvement notices, prohibition notices and certain directions

- (1) An improvement notice issued under section 43 of the old Act or prohibition notice issued under section 44 of the old Act, that was in force immediately before the commencement of Part 9 of this Act is, on and after that commencement, taken to be an improvement notice or prohibition notice (as the case may be) issued under that Part and may be varied or cancelled accordingly.
- (2) A direction issued by an inspector under section 39(1)(j) of the old Act that has effect immediately before the commencement of Part 9 of this Act continues, on and after that commencement, to have that effect subject to any limitations or conditions that applied immediately before the commencement.

170 Things done under the old Act

- (1) This section applies to—
 - (a) a licence or certificate issued; or
 - (b) a registration or notification effected; or
 - (c) an exemption granted; or
 - (d) any other thing done—
under or for the purposes of the old Act or the regulations under the old Act, that has effect immediately before the commencement of Part 1 of this Act.
- (2) If, on that commencement, there is a provision in this Act or the regulations that requires or allows a corresponding thing to be done, the thing—
 - (a) is taken to have been done, on and after that commencement, under or for the purposes of that provision; and

(b) is subject to any limitations or conditions that applied immediately before that commencement.

(3) This section has effect subject to anything to the contrary in this Division or this Act.

171 Proceedings for offences against old Act

Division 1 of Part 11 applies to proceedings for an offence against the old Act that are commenced on or after the commencement of this Part.

172 Continuation of certain regulations

(1) Despite section 5 of the **Subordinate Legislation Act 1994**, the regulations made under the old Act that are listed in the table, as in force immediately before the commencement of this Part, continue on and after that commencement as though they had been made under this Act until the earlier of—

(a) when they are revoked; or

(b) the second anniversary of that commencement.

<i>Item</i>	<i>Title</i>	<i>Statutory rule number</i>
1.	Occupational Health and Safety (Certification of Plant Users and Operators) Regulations 1994	108/1994
2.	Occupational Health and Safety (Confined Spaces) Regulations 1996	148/1996
3.	Occupational Health and Safety (Hazardous Substances) Regulations 1999	143/1999
4.	Occupational Health and Safety (Issue Resolution) Regulations 1999	94/1999
5.	Occupational Health and Safety (Lead) Regulations 2000	62/2000
6.	Occupational Health and Safety (Manual Handling) Regulations 1999	84/1999

Occupational Health and Safety Act 2004
No. 107 of 2004
Part 14—Repeal of Old Act and Transitional Provisions

s. 173

<i>Item</i>	<i>Title</i>	<i>Statutory rule number</i>
7.	Occupational Health and Safety (Mines) Regulations 2002	104/2002
8.	Occupational Health and Safety (Noise) Regulations 2004	10/2004
9.	Occupational Health and Safety (Plant) Regulations 1995	81/1995
10.	Occupational Health and Safety (Prevention of Falls) Regulations 2003	121/2003

- (2) Section 5 of the **Subordinate Legislation Act 1994** does not apply to the Occupational Health and Safety (Plant) Regulations 1995.

Note

This subsection commences on the day after the day on which this Act receives the Royal Assent (see section 3). These Regulations would otherwise have been revoked by section 5 of the **Subordinate Legislation Act 1994** on 27 June 2005.

173 Occupational Health and Safety (Asbestos) Regulations 2003

- (1) Parts 1 and 2, Divisions 1 and 2 of Part 3 and Parts 4 to 8 of the Occupational Health and Safety (Asbestos) Regulations 2003 made under the old Act, and Schedules 1 to 4 to those Regulations, as in force immediately before the commencement of this Part, continue on and after that commencement as though they were regulations made under this Act until the earlier of—
- (a) when they are revoked; or
 - (b) the second anniversary of that commencement.
- (2) To avoid doubt, Part 1 and Division 3 of Part 3 of the Occupational Health and Safety (Asbestos) Regulations 2003 made under the **Dangerous Goods Act 1985**, as in force immediately before

the commencement of this Part, continue on and after that commencement as regulations made under that Act until the earlier of—

- (a) the day on which they are revoked by section 5 of the **Subordinate Legislation Act 1994**; or
- (b) the day on which they are otherwise revoked.

174 Occupational Health and Safety (Major Hazard Facilities) Regulations 2000

- (1) Parts 1 to 8 of the Occupational Health and Safety (Major Hazard Facilities) Regulations 2000 made under the old Act, and Schedules 1 to 5 to those Regulations, as in force immediately before the commencement of this Part, continue on and after that commencement as though they were regulations made under this Act until the earlier of—
 - (a) when they are revoked; or
 - (b) the second anniversary of that commencement.
- (2) To avoid doubt, Parts 1, 9 and 10 of the Occupational Health and Safety (Major Hazard Facilities) Regulations 2000 made under the **Dangerous Goods Act 1985**, as in force immediately before the commencement of this Part, continue on and after that commencement as regulations made under that Act until the earlier of—
 - (a) the day on which they are revoked by section 5 of the **Subordinate Legislation Act 1994**; or
 - (b) the day on which they are otherwise revoked.

175 Offences against certain regulations

- (1) An offence against any of the following regulations that is committed on or after the commencement of this Part is not an indictable offence despite anything to the contrary in those regulations—
 - (a) regulation 301, 304, 306 or 801 of the Occupational Health and Safety (Major Hazard Facilities) Regulations 2000;
 - (b) regulation 9 of the Occupational Health and Safety (Manual Handling) Regulations 1999.
- (2) Despite the repeal of the old Act, section 47 of that Act continues to apply for the purposes of the regulations made under the old Act that are mentioned in sections 172 to 174.

Note

Section 47 of the old Act provides penalties that apply to offences for which no penalty is expressly provided.

176 Regulations dealing with transitional matters

The Governor in Council may make regulations in relation to any matters of a transitional nature that may arise out of the enactment of this Act, the repeal of the old Act or amendments made by this Act.

177 Proceedings for contravention of section 78A or 78C

A proceeding for a contravention of section 78A or 78C must not be brought in respect of conduct that occurred before the commencement of section 6 of the **Occupational Health and Safety Amendment (Employee Protection) Act 2009**.

S. 177
inserted by
No. 34/2009
s. 7.

Occupational Health and Safety Act 2004
No. 107 of 2004

s. 178

Part 15
(Heading and
ss 177–186)
amended by
No. 31/2005
s. 38,
repealed by
No. 28/2007
s. 3(Sch.
item 48).

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ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 18 November 2004

Legislative Council: 14 December 2004

The long title for the Bill for this Act was "to promote and improve standards for occupational health, safety and welfare, to repeal the **Occupational Health and Safety Act 1985** and for other purposes."

The **Occupational Health and Safety Act 2004** was assented to on 21 December 2004 and came into operation as follows:

Part 2 Division 6 (section 19) and section 172(2) on 22 December 2004: s. 3(3); Parts 1 (sections 1–6), 2 (except Division 6), 3 (except section 28), 5 (sections 37–39), 6 (sections 40–42), 7 (sections 43–78), 8 (sections 79–94), 9 (sections 95–126), 10 (sections 127–129), 11 (sections 130–148), 12 (sections 149–151), 13 (sections 152–158), 14 (except s. 172(2)), 15 (sections 177–186) on 1 July 2005: s. 3(1); Part 4 (sections 35, 36) on 1 January 2006: section 3(4); section 28 on 1 July 2006: section 3(2).

2. Table of Amendments

This Version incorporates amendments made to the **Occupational Health and Safety Act 2004** by Acts and subordinate instruments.

Accident Compensation (Amendment) Act 2005, No. 28/2005

Assent Date: 21.6.05
Commencement Date: Ss 28, 29 on 1.7.05: s. 2(5)
Current State: This information relates only to the provision/s amending the **Occupational Health and Safety Act 2004**

Dangerous Goods and Equipment (Public Safety) Acts (Amendment) Act 2005, No. 31/2005

Assent Date: 21.6.05
Commencement Date: S. 38 on 1.7.05: s. 2
Current State: This information relates only to the provision/s amending the **Occupational Health and Safety Act 2004**

Health Professions Registration Act 2005, No. 97/2005

Assent Date: 7.12.05
Commencement Date: S. 182(Sch. 4 item 38) on 1.7.07: s. 2(3)
Current State: This information relates only to the provision/s amending the **Occupational Health and Safety Act 2004**

Infringements (Consequential and Other Amendments) Act 2006, No. 32/2006

Assent Date: 13.6.06
Commencement Date: S. 94(Sch. item 36) on 1.7.06: Government Gazette 29.6.06 p. 1315
Current State: This information relates only to the provision/s amending the **Occupational Health and Safety Act 2004**

Mineral Resources Development (Sustainable Development) Act 2006, No. 63/2006

Assent Date: 29.8.06
Commencement Date: S. 61(Sch. item 26) on 30.8.06: s. 2(1)
Current State: This information relates only to the provision/s amending the **Occupational Health and Safety Act 2004**

Statute Law Revision Act 2007, No. 28/2007

Assent Date: 26.6.07
Commencement Date: S. 3(Sch. item 48) on 27.6.07: s. 2(1)
Current State: This information relates only to the provision/s amending the **Occupational Health and Safety Act 2004**

Occupational Health and Safety Act 2004
No. 107 of 2004

Endnotes

Dangerous Goods Amendment (Transport) Act 2008, No. 66/2008

Assent Date: 18.11.08
Commencement Date: S. 32 on 1.1.09: Government Gazette 18.12.08 p. 2998
Current State: This information relates only to the provision/s amending the **Occupational Health and Safety Act 2004**

Resources Industry Legislation Amendment Act 2009, No. 6/2009

Assent Date: 3.3.09
Commencement Date: S. 56 on 1.1.10: s. 2(2)
Current State: This information relates only to the provision/s amending the **Occupational Health and Safety Act 2004**

Fair Work (Commonwealth Powers) Act 2009, No. 24/2009

Assent Date: 17.6.09
Commencement Date: Ss 34, 35 on 1.7.09: Special Gazette (No. 227) 1.7.09 p. 1
Current State: This information relates only to the provision/s amending the **Occupational Health and Safety Act 2004**

Occupational Health and Safety Amendment (Employee Protection) Act 2009, No. 34/2009

Assent Date: 30.6.09
Commencement Date: 1.7.09: s. 2(2)
Current State: All of Act in operation

Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009, No. 68/2009

Assent Date: 24.11.09
Commencement Date: S. 97(Sch. item 90) on 1.1.10: Government Gazette 10.12.09 p. 3215
Current State: This information relates only to the provision/s amending the **Occupational Health and Safety Act 2004**

Statute Law Amendment (Evidence Consequential Provisions) Act 2009, No. 69/2009

Assent Date: 24.11.09
Commencement Date: S. 54(Sch. Pt 1 item 40) on 1.1.10: s. 2(2)
Current State: This information relates only to the provision/s amending the **Occupational Health and Safety Act 2004**

Offshore Petroleum and Greenhouse Gas Storage Act 2010, No. 10/2010

Assent Date: 23.3.10
Commencement Date: S. 800(Sch. 6 item 10) on 1.1.12: s. 2(2)
Current State: This information relates only to the provision/s amending the **Occupational Health and Safety Act 2004**

Occupational Health and Safety Act 2004
No. 107 of 2004

Endnotes

Statute Law Amendment (National Health Practitioner Regulation) Act 2010, No. 13/2010

Assent Date: 30.3.10
Commencement Date: S. 51(Sch. item 39) on 1.7.10: s. 2(2)
Current State: This information relates only to the provision/s amending the **Occupational Health and Safety Act 2004**

Sentencing Amendment (Community Correction Reform) Act 2011, No. 65/2011

Assent Date: 22.11.11
Commencement Date: S. 107(Sch. item 10) on 16.1.12: Special Gazette (No. 423) 21.12.11 p. 3
Current State: This information relates only to the provision/s amending the **Occupational Health and Safety Act 2004**

3. Explanatory Details

No entries at date of publication.