

Version No. 024
Equipment (Public Safety) Act 1994
No. 21 of 1994

Version incorporating amendments as at 19 October 2007

TABLE OF PROVISIONS

<i>Section</i>	<i>Page</i>
PART 1—PRELIMINARY	1
1 Purpose	1
2 Commencement	1
3 Definitions	1
4 Act binds the Crown	4
5 Application	4
6 Objects of Act	5
PART 2—EQUIPMENT AND PUBLIC SAFETY	6
7 Duties of proprietors of prescribed equipment	6
8 Duties of manufacturers, designers, importers, suppliers and people who erect or install prescribed equipment	6
9 Duties of persons in charge of prescribed equipment	7
9A Duty of site managers	7
10 Compliance with regulations is compliance with Part 2	8
11 Civil liability not affected by Part 2	8
PART 3—INSPECTORS AND ENFORCEMENT	9
Division 1—Appointment of inspectors	9
12 Appointment of inspectors	9
12A Identity cards	9
Division 2—Performance of functions or exercise of powers	10
13 Inspectors subject to Authority's directions	10
Division 3—Powers relating to entry	10
14 Power to enter	10
14A General powers on entry	11
14B Power to require production of documents etc.	12
14C Power to take samples	13

<i>Section</i>	<i>Page</i>
Division 4—Procedure relating to entry	14
15 Announcement on entry	14
15A Report to be given about entry	14
Division 5—Search warrants	15
16 Issue of search warrants	15
16A Announcement before entry on warrant	17
16B Copy of warrant to be given to person in control of place to be searched	17
Division 6—Limitation on entry powers	18
17 Places used for residential purposes	18
Division 7—Return and forfeiture of seized things	18
18 Return of seized things	18
18A Forfeiture of seized things	19
Division 8—Powers to issue notices	20
19 Power to issue non-disturbance notice	20
19A Power to issue improvement notice	21
19B Power to issue prohibition notice	23
19C Directions or conditions in notices	25
19D Variation or cancellation of notices	25
19E Service of notices	26
19F Formal irregularities or defects in notices	27
19G Proceedings for offences not affected by notices	27
19H Injunctions for non-compliance with notices	28
Division 9—Other powers	28
20 Power to require name and address	28
20A Power to give directions	29
Division 10—Other matters	30
21 People who must assist inspector	30
21A Other assistance in exercising powers	30
21B Inspector may take affidavits	31
21C Inspector may copy documents	31
Division 11—Offences	31
22 Offences in relation to inspections	31
22A Offence to impersonate inspector	32
Division 12—Protections concerning self-incrimination and legal professional privilege	32
23 Protection against self-incrimination	32
23A Legal professional privilege not affected	33

<i>Section</i>	<i>Page</i>
PART 4—REVIEW OF DECISIONS	34
24 Which decisions are reviewable	34
24A Internal review	37
24B Review by the Tribunal	39
25 <i>Repealed</i>	39
PART 5—LEGAL PROCEEDINGS	40
26 General	40
27 Infringement notices	40
28 Proceedings may be brought by the Authority or inspectors	41
28A Procedure if prosecution is not brought	42
28B Limitation period for prosecutions	44
29 Judicial notice of Minister's signature etc.	44
30 Provisions as to certain evidence	44
31 Offences by bodies corporate	45
31A Responsible agency for the Crown	46
31B Infringement and other notices may be issued to the Crown	47
31C Proceedings against successors to public bodies	47
32 Further penalties for subsequent offences	48
PART 6—GENERAL	49
33 Codes of practice	49
34 Use of codes of practice in proceedings	50
34A Authority may accept undertakings	51
34B Enforcement of undertakings	51
34C Power to give advice on compliance	52
35 Delegation	53
35A Offence to give false or misleading information	53
36 Regulations	53
37 Orders with respect to prescribed equipment	56
PART 7—SAVINGS AND TRANSITIONAL PROVISIONS— DANGEROUS GOODS AND EQUIPMENT (PUBLIC SAFETY) ACTS (AMENDMENT) ACT 2005	57
38 Definition	57
39 Interpretation of Legislation Act 1984 not affected	57
40 Amendments not to affect the appointment of inspectors	57
41 Continuation of improvement notices, prohibition notices and certain directions	58
42 Application of provisions concerning prosecutions	58
43 Continuation of the Equipment (Public Safety) (General) Regulations 1995	59

<i>Section</i>	<i>Page</i>
SCHEDULE—Subject matter for Regulations	60
<hr/> <hr/>	
ENDNOTES	63
1. General Information	63
2. Table of Amendments	64
3. Explanatory Details	66

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The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1 Purpose

The main purpose of this Act is to provide for public safety in relation to prescribed equipment and equipment sites.

2 Commencement

- (1) Section 1 and this section come into operation on the day this Act receives the Royal Assent.
- (2) The remaining provisions of this Act come into operation on a day to be proclaimed.
- (3) If a provision referred to in subsection (2) does not come into operation before 1 December 1994, it comes into operation on 1 December 1994.

3 Definitions

- (1) In this Act—

Authority means the Victorian WorkCover Authority established under section 18 of the **Accident Compensation Act 1985**¹;

S. 3(1) def. of *Authority* inserted by No. 13/1996 s. 34.

eligible person, in relation to a reviewable decision, has the meaning given by section 24;

S. 3(1) def. of *eligible person* inserted by No. 31/2005 s. 24(1).

equipment means plant, machinery, apparatus, scaffolding, appliance, implement or tool, and includes—

- (a) any component of that equipment; and
- (b) anything fitted, connected or appurtenant to that equipment;

equipment site means any place, whether or not in a building or structure, where prescribed equipment is or is being constructed, manufactured, installed, erected, altered, maintained, repaired or used;

inspector means a person—

- (a) appointed as an inspector under section 12; or
- (b) appointed as an inspector under the **Occupational Health and Safety Act 2004**;

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

practicable means practicable having regard to—

- (a) the severity of the hazard or risk in question; and
- (b) the state of knowledge about that hazard or risk and any ways of removing or mitigating that hazard or risk; and
- (c) the availability and suitability of ways to remove or mitigate that hazard or risk; and
- (d) the cost of removing or mitigating that hazard or risk;

S. 3(1) def. of *inspector* substituted by No. 31/2005 s. 24(2).

S. 3(1) def. of *place* inserted by No. 31/2005 s. 24(1).

prescribed equipment means any equipment which is declared by the regulations to be prescribed equipment;

proprietor in relation to any prescribed equipment, means an owner, a lessee or a person having by whatever right or title the actual possession or control of the equipment;

reviewable decision has the meaning given by section 24;

S. 3(1) def. of *reviewable decision* inserted by No. 31/2005 s. 24(1).

site manager in relation to an equipment site, means a person who has the management or control of the site;

supply in relation to any prescribed equipment, 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**.

S. 3(1) def. of *Tribunal* inserted by No. 31/2005 s. 24(1).

- (2) In this Act a reference to a site manager includes a reference to a person appointed by the site manager to act on his or her behalf for the purposes of this Act.

S. 4
substituted by
No. 31/2005
s. 25.

4 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.

5 Application

This Act does not apply to—

S. 5(a)
amended by
No. 107/2004
s. 180(1) (as
amended by
No. 31/2005
s. 38).

- (a) a workplace within the meaning of the **Occupational Health and Safety Act 2004** except a workplace which is being used for the manufacture, construction, alteration, maintenance or repair of prescribed equipment for use outside a workplace; or
- (b) prescribed equipment at a workplace except prescribed equipment which is being manufactured, constructed, altered, maintained or repaired for use outside a workplace; or
- (c) prescribed equipment being used—
 - (i) in a mine within the meaning of section 369 of the **Mines Act 1958**; or
 - (ii) in connection with work being done under a licence within the meaning of the **Mineral Resources (Sustainable Development) Act 1990**.

S. 5(c)(ii)
amended by
No. 63/2006
s. 61(Sch.
item 12).

6 Objects of Act

The objects of this Act are—

- (a) to secure the health and safety of persons in relation to the design, construction, manufacture, installation, erection, alteration, maintenance, repair and use of prescribed equipment;
 - (b) to protect people generally against risks to health or safety in relation to prescribed equipment;
 - (c) to eliminate, at the source, risks to health and safety of persons in relation to the design, construction, manufacture, installation, erection, alteration, maintenance, repair and use of prescribed equipment.
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PART 2—EQUIPMENT AND PUBLIC SAFETY

7 Duties of proprietors of prescribed equipment

A proprietor of prescribed equipment must take any measures that are practicable to ensure that the equipment is safe and without risks to health when properly used.

8 Duties of manufacturers, designers, importers, suppliers and people who erect or install prescribed equipment

- (1) A person who designs, manufactures, imports or supplies any prescribed equipment must—
 - (a) ensure, so far as is practicable, that the equipment is so designed and constructed as to be safe and without risks to health when properly used; and
 - (b) carry out or arrange for the carrying out of any testing and examination that may be necessary for the performance of the duty imposed by paragraph (a); and
 - (c) take any action necessary to ensure that there will be available in connection with the use of the prescribed equipment adequate information about—
 - (i) the use for which it is designed and has been tested; and
 - (ii) any conditions necessary to ensure that when put to that use it will be safe and without risks to health.
 - (2) A person who erects or installs any prescribed equipment must ensure, so far as is practicable, that nothing about the way in which it is erected or installed makes it unsafe or a risk to health when properly used.
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- (3) For the purposes of this section, prescribed equipment is not to be regarded as properly used if it is used without regard to any relevant information or advice that is available relating to its use.

9 Duties of persons in charge of prescribed equipment

- (1) A person who is in charge of prescribed equipment must take reasonable care for his or her own health and safety and for the health and safety of any other person who may be affected by his or her acts or omissions in relation to the equipment.
- (2) A person who is in charge of prescribed equipment must not—
- (a) wilfully or recklessly interfere with or misuse anything provided in the interests of health or safety pursuant to this Act or the regulations; or
 - (b) wilfully place at risk the health or safety of any person at the equipment site.

9A Duty of site managers

A site manager must appoint a person to act as the site manager for the purposes of this Act during any period that the site manager is absent from the site.

S. 9A
inserted by
No. 31/2005
s. 26.

Note

This section re-enacts section 14(3) of the Act as it was before the commencement of section 27 of the **Dangerous Goods and Equipment (Public Safety) Acts (Amendment) Act 2005**.

10 Compliance with regulations is compliance with Part 2

Where the regulations make provision for or in relation to any duty, obligation, act, matter or thing to which this Part applies, a person who complies with the regulations in relation to that duty, obligation, act, matter or thing is deemed to have complied with this Part in relation to that duty, obligation, act, matter or thing.

11 Civil liability not affected by Part 2

Nothing in this Part shall be construed as—

- (a) conferring a right of action in any civil proceedings in respect of any contravention, whether by act or omission, of any provision of this Part; or
 - (b) conferring a defence to an action in any civil proceedings or as otherwise affecting a right of action in any 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 imposed by the regulations; or
 - (d) taking away any right of action which a person may have in respect of a malicious and fraudulent claim that equipment is unsafe or a risk to health.
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PART 3—INSPECTORS AND ENFORCEMENT

Pt 3 (Heading and ss 12–21) amended by Nos 13/1996 ss 35, 36, 52/1998 s. 311(Sch. 1 item 28.1), substituted as Pt 3 (Headings and ss 12–23A) by No. 31/2005 s. 27.

Division 1—Appointment of inspectors

12 Appointment of inspectors

S. 12 substituted by No. 31/2005 s. 27.

- (1) The Authority may, by instrument in writing, appoint an officer or employee of the Authority to be an inspector for the purposes of this Act.
- (2) The Authority must give each person who is appointed as an inspector a certificate of appointment signed by the chief executive of the Authority (appointed under section 22 of the **Accident Compensation Act 1985**).
- (3) A certificate of appointment given to a person in accordance with subsection (2) is conclusive proof of the valid appointment of the person as an inspector under this section.
- (4) This section does not apply to a person referred to in paragraph (b) of the definition of *inspector* in section 3(1).

12A Identity cards

S. 12A inserted by No. 31/2005 s. 27.

- (1) The Authority must issue an identity card to each inspector appointed under section 12 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 is practicable.

Division 2—Performance of functions or exercise of powers

S. 13
substituted by
No. 31/2005
s. 27.

13 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 in the exercise of his or her powers under this Act and the regulations.
- (2) A direction under subsection (1) may be of a general nature or may relate to a specified matter or to a specified class of matter.

Division 3—Powers relating to entry

S. 14
substituted by
No. 31/2005
s. 27.

14 Power to enter

- (1) An inspector may enter a place that the inspector reasonably believes is an equipment site at any reasonable time (whether it is day or night).

Notes

- 1 **Place** is defined in section 3 as including a car, truck, ship, boat, airplane and any other vehicle.
 - 2 The powers conferred by this section are limited in respect of a part of a place that is used only for residential purposes (see section 17).
- (2) Without limiting subsection (1), it is a reasonable time to enter a place at any time that the inspector reasonably believes that there is an immediate risk to the health or safety of a person at the place.

14A General powers on entry

S. 14A
inserted by
No. 31/2005
s. 27.

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 in respect of a part of a place that is used only for residential purposes (see section 17).

S. 14B
inserted by
No. 31/2005
s. 27.

14B 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.

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- (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 in respect of a part of a place that is used only for residential purposes (see section 17).
- 2 This section does not affect legal professional privilege (see section 23A) or, in the case of a requirement to answer questions, the privilege against self-incrimination (see section 23).

14C Power to take samples

S. 14C
inserted by
No. 31/2005
s. 27.

- (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 site manager of that intention.
- (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, mark, and seal or fasten up, each part in a way that the nature of the sample allows; and
 - (b) if the person who must be notified under subsection (2) requires the inspector to give him or her a part, give one part to that person; 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

S. 15
substituted by
No. 31/2005
s. 27.

15 Announcement on entry

- (1) Immediately on entering a place under Division 3, an inspector must take all reasonable steps to notify the site manager of the place of the entry, and to produce his or her identity card for inspection by the site manager.
- (2) However, an inspector is not required to notify, or produce his or her identity card for inspection by, the site manager if—
 - (a) to do so would defeat the purpose for which the place was entered, or would cause unreasonable delay; or
 - (b) the site manager is already aware that the inspector has entered the place or was notified in advance of when the inspector would enter.

S. 15A
inserted by
No. 31/2005
s. 27.

15A 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 is practicable after, he or she leaves the place to the site manager of the place.
- (2) The report must be in writing and must include—
 - (a) the time of the entry and departure; and
 - (b) the purpose of the entry; and
 - (c) a description of the 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

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- (f) the procedure for seeking a review of any decision made by the inspector during the entry.
 - (3) If the inspector takes photographs or makes sketches or recordings under section 14A(f), the report must also include a statement—
 - (a) that the photographs have been taken, or that the sketches or recordings have been made; and
 - (b) that they are, or will be, available for inspection at a specified place.

Division 5—Search warrants

16 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 (whether or not it is, or is believed to be, an equipment site) 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.

S. 16
substituted by
No. 31/2005
s. 27.

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- (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 day 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 required 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.
- (7) Despite section 5, a search warrant may authorise an inspector to search a place that is a workplace within the meaning of the **Occupational Health and Safety Act 2004**.
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16A Announcement before entry on warrant

S. 16A
inserted by
No. 31/2005
s. 27.

- (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.

16B Copy of warrant to be given to person in control of place to be searched

S. 16B
inserted by
No. 31/2005
s. 27.

If a person who has the management or control, or apparent management or control, of the place for the time being is present at a place when a search warrant is being executed, the inspector must—

- (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

S. 17
substituted by
No. 31/2005
s. 27.

17 Places used for residential purposes

- (1) 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.
- (2) For the purposes of subsection (1), any common property in a subdivision of land is not a place used only for residential purposes.

Examples:

Examples of common property include a lift, or lift well, in a block of flats; and a plant or boiler room in an apartment building that contains heating or cooling equipment, lift machinery or pressure vessels.

Division 7—Return and forfeiture of seized things

S. 18
substituted by
No. 31/2005
s. 27.

18 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 that may be commenced, for an offence against this Act or the regulations; or
 - (b) the thing is forfeited to the Authority under section 18A; or

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- (c) the Authority is otherwise authorised (by a law or court order) to retain, destroy or dispose of the thing.
- (2) The thing may be returned either unconditionally or on any terms and conditions that the Authority considers appropriate to eliminate or reduce any risks to health or safety arising from, or in relation to, prescribed equipment.
- (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.

18A 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 a review of the decision to forfeit the thing, unless the Authority cannot find the owner despite making reasonable enquiries.

S. 18A
inserted by
No. 31/2005
s. 27.

Division 8—Powers to issue notices

S. 19
substituted by
No. 31/2005
s. 27.

19 Power to issue non-disturbance notice

- (1) An inspector who, under this Part, has entered a place that is an equipment site may issue a non-disturbance notice to the site manager requiring the site manager—
 - (a) to stop the use or movement of, or interference with, any specified prescribed equipment or other thing associated with that equipment; and
 - (b) to prevent the disturbance of the equipment or other thing or a specified area of the place where the equipment 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 the exercise of his or her powers under this Act or the regulations in relation to the place or any equipment 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 site manager; and
 - (b) the penalty for contravening the notice; and
 - (c) how the site manager may seek a review of the issue of the notice; and
 - (d) a statement of the effect of section 19G (proceedings for offences not affected by notices).

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- (3) If an inspector considers it necessary to do so, he or she may issue one or more subsequent non-disturbance notices to a site manager, 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 is 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

However, the offence may be heard and determined summarily (see section 53 of, and Schedule 4 to, the **Magistrates' Court Act 1989**).

19A Power to issue improvement notice

S. 19A
inserted by
No. 31/2005
s. 27.

- (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

s. 19A

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- (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
 - (d) set out the penalty for contravening the notice; and
 - (e) state how the person may seek a review of the issue of the notice; and
 - (f) include a statement of the effect of section 19G (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
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- (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

However, the offence may be heard and determined summarily (see section 53 of, and Schedule 4 to, the **Magistrates' Court Act 1989**).

- (6) If an application for a review of a decision under this section has been made under Part 4, an inspector must not give a certificate under subsection (3)(a) in relation to the improvement notice concerned until after the review ends.

19B Power to issue prohibition notice

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

S. 19B
inserted by
No. 31/2005
s. 27.

writing that the matters that give, or that 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
 - (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 a review of the issue of the notice; and
 - (f) include a statement of the effect of section 19G (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) an equipment site, or part of an equipment site, 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.
- (6) An offence against subsection (5) is an indictable offence.

Note

However, the offence may be heard and determined summarily (see section 53 of, and Schedule 4 to, the **Magistrates' Court Act 1989**).

- (7) If an application for a review of a decision under this section has been made under Part 4, an inspector must not give a certificate under subsection (1) in relation to the prohibition notice concerned until after the review ends.

19C Directions or conditions in notices

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

- (a) refer to a code of practice; 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.

S. 19C
inserted by
No. 31/2005
s. 27.

19D 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**).

S. 19D
inserted by
No. 31/2005
s. 27.

S. 19E
inserted by
No. 31/2005
s. 27.

19E Service of notices

- (1) A non-disturbance notice, improvement notice or prohibition notice may be issued to a person—
 - (a) by delivering it personally to the person, or by sending it by post or facsimile to the person's usual or last known place of residence or business; or
 - (b) by 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) in the case of a notice relating to an equipment site, by leaving it for the person at the site with a person who is apparently over 16 years and who apparently is the site manager for the time being of the site.
- (2) If the person to whom an improvement notice or prohibition notice is issued is the proprietor of, or is in charge of, prescribed equipment at an equipment site, but is not the site manager of the site, he or she must as soon as possible give a copy of the notice to the site manager of the site (unless the equipment to which the notice relates is no longer at the site).

Penalty: 5 penalty units for a natural person;
25 penalty units for a body corporate.
- (3) The site manager of the place in relation to which a non-disturbance notice, improvement notice or prohibition notice is issued must, as soon as possible after becoming aware of the issuing of the notice—

-
- (a) bring the notice to the attention of each proprietor of, and each person who is in charge of, any prescribed equipment at the place that is affected by the notice (unless the proprietor or person is already aware of the notice); and
 - (b) prominently display a copy of the notice at or near the place, or part of the place, or prescribed equipment, that is affected by the notice.

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

19F 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 19E.

S. 19F
inserted by
No. 31/2005
s. 27.

19G 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.

S. 19G
inserted by
No. 31/2005
s. 27.

s. 19H

S. 19H
inserted by
No. 31/2005
s. 27.

19H Injunctions for non-compliance with notices

- (1) The Authority may apply to the Supreme Court for an injunction—
 - (a) to compel a person to comply with a non-disturbance notice, improvement notice or prohibition notice; or
 - (b) to restrain 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

S. 20
substituted by
No. 31/2005
s. 27.

20 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 detail; 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 is 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.

20A Power to give directions

S. 20A
inserted by
No. 31/2005
s. 27.

- (1) An inspector may give a direction (either orally or in writing) to a person at an equipment site 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

However, the offence may be heard and determined summarily (see section 53 of, and Schedule 4 to, the **Magistrates' Court Act 1989**).

Division 10—Other matters

S. 21
substituted by
No. 31/2005
s. 27.

21 People 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 the exercise of his or her powers, under this Act or the regulations—

- (a) in relation to an equipment site, the site manager;
- (b) in relation to any other place, the person who has the management or control of the place for the time being;
- (c) in relation to prescribed equipment, the proprietor of the equipment and the person who is in charge of the equipment.

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

S. 21A
inserted by
No. 31/2005
s. 27.

21A 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 place, the person assisting must be allowed access to the place by the person who has the management or control of the place for the time being.

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

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- (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.

21B 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 the exercise of his or her powers, under this Act or the regulations.

S. 21B
inserted by
No. 31/2005
s. 27.

21C 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.

S. 21C
inserted by
No. 31/2005
s. 27.

Division 11—Offences

22 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 in the 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 equipment, substance or other thing; or

S. 22
substituted by
No. 31/2005
s. 27.

s. 22A

(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 assault, 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.

S. 22A
inserted by
No. 31/2005
s. 27.

22A 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.

Division 12—Protections concerning self-incrimination and legal professional privilege

S. 23
substituted by
No. 31/2005
s. 27.

23 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—

(a) to 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) to the giving of a person's name or address in accordance with section 20.

23A Legal professional privilege not affected

Nothing in this Act or the regulations—

- (a) entitles or requires a person to disclose information that is the subject of legal professional privilege; or
 - (b) affects the law or practice relating to legal professional privilege.
-

S. 23A
inserted by
No. 31/2005
s. 27.

Pt 4 (Heading and ss 22–25) amended by No. 52/1998 s. 311(Sch. 1 items 28.2, 28.3), substituted as Pt 4 (Heading and ss 24–24B) by No. 31/2005 s. 27.

PART 4—REVIEW OF DECISIONS

S. 24 substituted by No. 31/2005 s. 27.

24 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 a 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.

Equipment (Public Safety) Act 1994
 No. 21 of 1994
 Part 4—Review of Decisions

s. 24

<i>Item</i>	<i>Provision under which reviewable decision is made</i>	<i>Reviewable decision</i>	<i>Eligible person</i>
1.	Section 18(2)	To impose terms and conditions on the return of a seized thing	(1) The owner of the seized thing. (2) A person who has an interest in the seized thing. (3) Any other person whose interests are affected by the decision.
2.	Section 18A(1)	To decide that a seized thing is forfeit	(1) A person to whom a notice of forfeiture is issued under section 18A(2). (2) A person who has an interest in the seized thing. (3) Any other person whose interests are affected by the decision.
3.	Section 19(1)	To issue a non-disturbance notice	(1) The person to whom the notice is issued. (2) Any other person whose interests are affected by the decision.

Equipment (Public Safety) Act 1994
 No. 21 of 1994
 Part 4—Review of Decisions

s. 24

<i>Item</i>	<i>Provision under which reviewable decision is made</i>	<i>Reviewable decision</i>	<i>Eligible person</i>
4.	Section 19A(1)	To issue an improvement notice	(1) The person to whom the notice is issued. (2) Any other person whose interests are affected by the decision.
5.	Section 19A(3)(a)	To certify that matters that are the subject of an improvement notice have been remedied	(1) The person to whom the notice was issued. (2) Any other person whose interests are affected by the decision.
6.	Section 19B(1)	To issue a prohibition notice	(1) The person to whom the notice is issued. (2) Any other person whose interests are affected by the decision.
7.	Section 19B(1)	To certify that matters that are the subject of a prohibition notice have been remedied	(1) The person to whom the notice was issued. (2) Any other person whose interests are affected by the decision.

Equipment (Public Safety) Act 1994
 No. 21 of 1994
 Part 4—Review of Decisions

s. 24A

<i>Item</i>	<i>Provision under which decision is made</i>	<i>Reviewable decision</i>	<i>Eligible person</i>
8.	Section 19D	To vary or cancel a non-disturbance notice, improvement notice or prohibition notice	(1) The person to whom the notice was issued. (2) Any other person whose interests are affected by the decision.

24A Internal review

S. 24A
 inserted by
 No. 31/2005
 s. 27.

- (1) An eligible person in relation to a reviewable decision, other than a decision made by the Authority, may apply to the Authority for a 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 to substitute another decision that the Authority considers appropriate.

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- (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 19A(3)(a) or 19B(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) The making of 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 that 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.

24B Review by the Tribunal

S. 24B
inserted by
No. 31/2005
s. 27.

- (1) A person may apply to the Tribunal for a 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 24A 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 3, within 28 days after the day on which the decision first came to the applicant's notice; or
 - (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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S. 25
repealed by
No. 31/2005
s. 27.

PART 5—LEGAL PROCEEDINGS

26 General

S. 26(1)
amended by
No. 31/2005
s. 28(1)(a).

(1) Any person who contravenes or fails to comply with any provision in Part 2, 5 or 6 (except sections 28(4), 28A, 29 and 33(4) or (5)) or the regulations is guilty of an offence against this Act.

S. 26(2)
amended by
No. 31/2005
s. 28(1)(b).

(2) Any person who is guilty of an offence against a provision of Part 2, 5 or 6 for which no penalty is expressly provided is liable to a penalty of not more than—

S. 26(2)(a)
amended by
No. 107/1997
s. 70(a).

(a) if that person is a body corporate, 400 penalty units if the offence is not an indictable offence, and 2500 penalty units if the offence is an indictable offence; or

S. 26(2)(b)
amended by
No. 107/1997
s. 70(b).

(b) in any other case, 100 penalty units if the offence is not an indictable offence, and 500 penalty units if the offence is an indictable offence.

S. 26(3)
amended by
No. 31/2005
s. 28(1)(c).

(3) An offence against this Act (not being a contravention of or failure to comply with a provision of Part 3 or 4 or of the regulations) is an indictable offence.

S. 26(4)
inserted by
No. 31/2005
s. 28(2).

(4) An offence against a provision of Part 3 or 4 is only an indictable offence if an express statement to that effect is made in that Part in relation to the offence.

27 Infringement notices

(1) Regulations under section 36 may provide for a person to be served with an infringement notice specifying a fixed penalty of not more than 10 penalty units for an offence against this Act as an alternative to a prosecution for the offence.

(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. 27(1A) inserted by No. 32/2006 s. 94(Sch. item 16(1)).

(2) The regulations must specify—

(a) the offences to which this alternative applies; and

(b) the fixed penalty for each of the offences; and

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S. 27(2)(c) repealed by No. 32/2006 s. 94(Sch. item 16(2) (a)(i)).

(d) the person or class of persons who may issue infringement notices.

S. 27(2)(d) amended by No. 32/2006 s. 94(Sch. item 16(2) (a)(ii)).

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S. 27(2)(e)(f) repealed by No. 32/2006 s. 94(Sch. item 16(2) (a)(iii)).

* * * * *

S. 27(3)–(8) repealed by No. 32/2006 s. 94(Sch. item 16(2)(b)).

28 Proceedings may be brought by the Authority or inspectors

S. 28 amended by Nos 13/1996 s. 37, 107/1997 s. 71, substituted by No. 31/2005 s. 29.

(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, 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. 28A
inserted by
No. 31/2005
s. 29.

28A Procedure if prosecution is not brought

- (1) If—
 - (a) a person considers that an offence against this Act has occurred; and
 - (b) no prosecution has been brought in respect of that occurrence within 6 months after that occurrence—the person may request in writing that the Authority bring a prosecution in respect of that occurrence.
- (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.

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- (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 that 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
 - (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.
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s. 28B

S. 28B
inserted by
No. 31/2005
s. 29.

28B 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.

S. 29
amended by
No. 13/1996
s. 38,
substituted by
No. 31/2005
s. 30.

29 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.

30 Provisions as to certain evidence

In any proceedings for an offence against this Act—

- (a) it is sufficient to allege that any building, structure, ship, boat or place is an equipment site within the meaning of this Act without further allegation;
- (b) it is sufficient to state the name of the ostensible site manager of any equipment site or proprietor of any prescribed equipment or person in charge of any prescribed equipment or the name or title by

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- which the site manager or proprietor or person in charge is usually known;
- (c) if the age of any person is material and there is insufficient evidence of the actual age of the person, the court may have regard to the apparent age of the person.

31 Offences by bodies corporate

- (1) If an offence against this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any wilful neglect on the part of, an officer of the body corporate or a person purporting to act as an officer, that officer or person is also guilty of that offence and liable to the penalty for that offence.
- (2) When in any proceedings under this Act it is necessary to establish the intention of a body corporate it is sufficient to show that a servant or agent of the body corporate had that intention.
- (3) In subsection (1) *officer* in relation to a body corporate means—
- (a) a director, secretary or executive officer of the body corporate; or
 - (b) any person in accordance with whose directions or instructions the directors of the body corporate are accustomed to act; or
 - (c) a person concerned in the management of the body corporate.

S. 31A
inserted by
No. 31/2005
s. 31.

31A 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.

31B Infringement and other notices may be issued to the Crown

S. 31B
inserted by
No. 31/2005
s. 31.

- (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 section 27.

- (2) If a notice is to be issued to the Crown under Division 8 of Part 3 by an inspector, the notice may be issued to the agency of the Crown that would be the responsible agency under section 31C if the Crown were prosecuted for an offence of contravening the notice.

31C Proceedings against successors to public bodies

S. 31C
inserted by
No. 31/2005
s. 31.

- (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**).
- (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.

32 Further penalties for subsequent offences

In any case where a person convicted of an offence against this Act has previously been convicted of an offence against this Act (whether the same offence or another), the court may, if it considers it appropriate to do so, impose in addition to the penalty it imposes for the present offence—

- (a) in the case of an indictable offence—
- (i) if the person is a body corporate, a further penalty of not less than 50 penalty units and not more than 2500 penalty units; or
 - (ii) in any other case, a further penalty of not less than 10 penalty units and not more than 500 penalty units or imprisonment for not more than 5 years or both;
- (b) in the case of a summary offence—
- (i) if the person is a body corporate, a further penalty of not less than 50 penalty units and not more than 400 penalty units; or
 - (ii) in any other case, a further penalty of not less than 10 penalty units and not more than 200 penalty units or imprisonment for not more than 2 years or both.

PART 6—GENERAL

33 Codes of practice

- (1) For the purpose of providing practical guidance to proprietors, manufacturers, designers, importers, suppliers, persons in charge of prescribed equipment and any other person who may be placed under an obligation by or under this Act, the Minister may approve any code of practice.
- (2) A code of practice may apply, adopt, incorporate or refer to any document formulated or published by any body or authority as in force at the time the code of practice is approved or as amended, formulated or published from time to time.
- (3) The Minister may approve any revision of the whole or any part of a code of practice or revoke the approval of a code of practice.
- (4) The Minister must cause to be published in the Government Gazette notices of—
 - (a) the approval of a code of practice; and
 - (b) the approval of a revision of the whole or any part of a code of practice; and
 - (c) the revocation of approval of a code of practice.
- (5) The Minister must cause a copy²—
 - (a) of every approved code of practice; and
 - (b) if an approved code of practice has been revised and that revision has been approved, of every approved code of practice as so revised; and

S. 33(5)
amended by
No. 13/1996
s. 39.

(c) if an approved code of practice applies incorporates or refers to any other document, of every such document—

to be made available for inspection by members of the public without charge at the office of the Authority during normal office hours.

- (6) An approved code of practice comes into effect—
- (a) on the day on which notice of approval of the code of practice is published in the Government Gazette or on a later day specified in the notice; and
 - (b) if the code of practice has been revised in whole or in part, to the extent of that revision on the day on which notice of approval of that revision is published in the Government Gazette or on a later day specified in the notice.
- (7) An approved code of practice ceases to be of effect at the end of the day on which notice of the revocation of approval of the code of practice is published in the Government Gazette.
- (8) A person is not liable to any civil or criminal proceedings by reason only that the person has failed to observe any provision of an approved code of practice.

34 Use of codes of practice in proceedings

If, in any proceedings under this Act, it is alleged that a person contravened or failed to comply with a provision of this Act or the regulations in relation to which an approved code of practice was in effect at the time of the alleged contravention or failure—

- (a) the approved code of practice is admissible in evidence in those proceedings; and

(b) if the court is satisfied in relation to any matter which it is necessary for the prosecution to prove in order to establish the alleged contravention or failure that—

- (i) any provision of the approved code of practice is relevant to that matter; and
- (ii) the person failed at any material time to observe that provision of the approved code of practice—

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

34A Authority may accept undertakings

S. 34A
inserted by
No. 31/2005
s. 32.

- (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.

34B Enforcement of undertakings

S. 34B
inserted by
No. 31/2005
s. 32.

- (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.

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- (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.

S. 34C
inserted by
No. 31/2005
s. 32.

34C 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.
- (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**).

35 Delegation

The Minister may by instrument delegate to any person any of the powers, authorities, duties or functions of the Minister under this Act or the regulations other than this power of delegation.

35A Offence to give false or misleading information

S. 35A
inserted by
No. 31/2005
s. 33.

- (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.

36 Regulations³

- (1) The Governor in Council may make regulations declaring any equipment to be prescribed equipment for the purposes of this Act and the regulations made under this Act.
- (2) The Governor in Council may make regulations for or with respect to the health and safety of persons in relation to prescribed equipment and at equipment sites.

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- (3) Without in any way limiting the generality of subsection (2), regulations may be made for the purposes of that subsection for or with respect to any of the matters specified in the Schedule.
- (4) Any regulations made under this section may—
- (a) be general or may be restricted in operation as to time, place, persons or circumstances whether that time, place, person or circumstance is determined or ascertainable before, at or after the making of the regulations;
 - (b) apply, adopt, incorporate or refer to, with or without modification, any document formulated or published by any body or authority as in force at the time the regulation is made or as amended, formulated or published from time to time;
 - (c) make different prescriptions or impose different requirements in respect of different classes, sub-classes or kinds of equipment, equipment sites, activities, persons or circumstances;
 - (d) 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;
 - (e) provide that the Authority may grant exemptions in respect of any requirement of or prohibition in the regulations upon such terms and conditions as are prescribed;
 - (f) confer powers or impose duties in connection with the regulations on the Authority, an inspector, any government department, any public authority, the council of any municipal district or any other prescribed person or body of persons.

S. 36(4)(d)
amended by
No. 13/1996
s. 40(1)(a).

S. 36(4)(e)
amended by
No. 13/1996
s. 40(1)(b).

S. 36(4)(f)
amended by
No. 13/1996
s. 40(1)(c).

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- (5) Where any regulations are made pursuant to clause 9 of the Schedule, those regulations must provide that any person who may be affected by a decision of any other person or body of persons in relation to—
- (a) the refusal to grant, renew or transfer the registration of or a licence in respect of any prescribed equipment or equipment site; or
 - (b) the variation of the terms and conditions upon which the registration of or a licence in respect of any prescribed equipment or equipment site were granted; or
 - (c) the cancellation or suspension of the registration of or a licence in respect of any prescribed equipment or equipment site—
- is entitled—
- (d) to be heard by that other person or body of persons in relation to that decision and to be given reasons for that decision; and
 - (e) to appeal against that decision to the court, tribunal, person or body of persons that is prescribed.
- (6) Any regulations made under clause 9 of the Schedule must also provide that where a person has appealed against a decision the operation of that decision is stayed pending the determination of that appeal.

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S. 36(7)
repealed by
No. 13/1996
s. 40(2).

37 Orders with respect to prescribed equipment

- (1) The Governor in Council may by Order published in the Government Gazette prohibit absolutely or subject to conditions or restrictions the manufacture, supply or use of any prescribed equipment when in the opinion of the Governor in Council it is expedient for the public safety to make the Order.
 - (2) A person who contravenes an Order made under subsection (1) is guilty of an offence.
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**PART 7—SAVINGS AND TRANSITIONAL PROVISIONS—
DANGEROUS GOODS AND EQUIPMENT (PUBLIC SAFETY)
ACTS (AMENDMENT) ACT 2005**

Pt 7
(Heading and
ss 38, 39)
substituted as
Pt 7
(Heading and
ss 38–43) by
No. 31/2005
s. 34.

38 Definition

In this Part *amending Act* means the **Dangerous Goods and Equipment (Public Safety) Acts (Amendment) Act 2005**.

S. 38
substituted by
No. 31/2005
s. 34.

39 Interpretation of Legislation Act 1984 not affected

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

S. 39
substituted by
No. 31/2005
s. 34.

40 Amendments not to affect the appointment of inspectors

On and after 1 July 2005—

- (a) a person holding office as an inspector under this Act immediately before that date is deemed to be an inspector appointed by the Authority under section 12 (as inserted by the amending Act); and
- (b) a certificate of appointment provided to the person under section 12(3) before that date is deemed to be a certificate of appointment given to the person under section 12(2) (as inserted by the amending Act); and
- (c) an identification card provided to the person under section 12(5) before that date is deemed to be an identification card issued to the person under section 12A (as inserted by the amending Act).

S. 40
inserted by
No. 31/2005
s. 34.

s. 41

S. 41
inserted by
No. 31/2005
s. 34.

41 Continuation of improvement notices, prohibition notices and certain directions

- (1) An improvement notice issued under section 22, or a prohibition notice issued under section 23, that was in force immediately before 1 July 2005 is, on and after that date, deemed to be an improvement notice or prohibition notice (as the case may be) issued under Part 3 (as inserted by the amending Act), and may be varied or cancelled accordingly.
- (2) A direction issued by an inspector under section 24 that has effect immediately before 1 July 2005 continues, on and after that date, to have that effect subject to any limitations or conditions that applied immediately before that date.

S. 42
inserted by
No. 31/2005
s. 34.

42 Application of provisions concerning prosecutions

- (1) Section 28 applies to proceedings for an offence that are commenced on or after 1 July 2005.
- (2) Section 28A only applies to alleged offences occurring on or after 1 July 2005.
- (3) Any guidelines issued under section 28(5) that were in force immediately before 1 July 2005 are, on and after that date, deemed to have been issued and published under section 28(4) (as inserted by the amending Act), and may be varied or revoked accordingly.

Equipment (Public Safety) Act 1994
No. 21 of 1994

Part 7—Savings and Transitional Provisions—Dangerous Goods and
Equipment (Public Safety) Acts (Amendment) Act 2005

s. 43

**43 Continuation of the Equipment (Public Safety)
(General) Regulations 1995**

S. 43
inserted by
No. 31/2005
s. 34.

Despite section 5 of the **Subordinate Legislation Act 1994**, the Equipment (Public Safety) (General) Regulations 1995 continue until the earlier of—

- (a) when they are revoked; or
 - (b) 1 July 2007.
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Sch.

SCHEDULE⁴

SUBJECT MATTER FOR REGULATIONS

- 1 Regulating or prohibiting—
 - (a) the design, manufacture, supply or use of any prescribed equipment; and
 - (b) the carrying on of any process or the carrying out of any operation.
- 2 Regulating the design, guarding, siting, construction, installation, bringing into operation, examination, repair, maintenance, alteration, adjustment, dismantling or testing of any prescribed equipment.
- 3 Requiring proprietors or other prescribed persons at the times and in the manner prescribed to examine, test, dismantle, repair, alter or adjust any prescribed equipment.
- 4 Requiring the use of prescribed equipment at any place.
- 5 Requiring any person to give notice of the erection or installation of prescribed equipment.
- 6 Regulating the siting, examination, repair, alteration, adjustment, dismantling, maintenance, care or use of and the conditions at, any equipment site.
- 7 Requiring proprietors of prescribed equipment or other prescribed persons at the times and in the manner prescribed to examine, test, analyse, label or mark any substance used in connection with prescribed equipment.
- 8 Inspections by inspectors.
- 9 Requiring any prescribed equipment to be registered or licensed by the Authority or by any other prescribed person or body of persons.

Sch. cl. 9
amended by
No. 13/1996
s. 41.

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- 10 Prohibiting the use of any prescribed equipment unless it is registered or licensed.
 - 11 Prescribing the persons who may apply for registration of or any licence in respect of any prescribed equipment.
 - 12 Prescribing the terms and conditions of registration of any prescribed equipment, or of any licence in respect of any prescribed equipment.
 - 13 Prescribing the circumstances in which registration of or any licence in respect of any prescribed equipment may be cancelled or suspended.
 - 14 Providing for the variation of the terms and conditions of registration of or any licence in respect of any prescribed equipment.
 - 15 Prescribing the manner of application for the granting, renewal or transfer of registration of or any licence in respect of any prescribed equipment.
 - 16 Prohibiting the carrying on of prescribed activities at equipment sites or the performance of prescribed work or the operation of prescribed equipment at equipment sites except under the supervision of or by persons with prescribed qualifications or experience.
 - 17 Requiring proprietors, manufacturers and suppliers of prescribed equipment to provide information in the manner prescribed for the guidance of persons operating or using prescribed equipment with respect to the safe use of the equipment.
 - 18 Regulating or requiring the taking of any action or precautions to avoid any accident or dangerous occurrence.
 - 19 Prohibiting or requiring the taking of any action in the event of any accident or dangerous occurrence.
 - 20 Regulating or requiring in prescribed circumstances the provision and use of protective clothing and equipment and rescue equipment.
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Sch.

- 21 Prescribing standards in relation to the use of, including standards of exposure to, any physical, biological, chemical or psychological hazard.
 - 22 Prescribing the fees chargeable or payable for doing any act or providing any service for the purposes of the regulations and prescribing the person or persons or body of persons to which the fees are payable and providing for the distribution of those fees and for the refund of fees in prescribed circumstances.
 - 23 Prescribing the manner of serving notices under this Act.
 - 24 Prescribing forms for the purposes of this Act and the regulations.
 - 25 Providing for contravention of or a failure to comply with a provision of a regulation to be an indictable offence or a summary offence.
 - 26 Prescribing penalties for any contravention of or failure to comply with the regulations not exceeding the penalties set out in section 26(2).
 - 27 Prescribing any matter or thing which by this Act is required or permitted to be prescribed for the purposes of this Act.
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ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 31 March 1994

Legislative Council: 26 April 1994

The long title for the Bill for this Act was "A Bill to provide for public safety in relation to prescribed equipment and equipment sites, to amend the **Occupational Health and Safety Act 1985** and Schedule 4 to the **Magistrates' Court Act 1989**".

The **Equipment (Public Safety) Act 1994** was assented to on 17 May 1994 and came into operation as follows:

Sections 1, 2 on 17 May 1994: section 2(1); rest of Act on 1 December 1994: section 2(3).

Equipment (Public Safety) Act 1994
No. 21 of 1994

Endnotes

2. Table of Amendments

This Version incorporates amendments made to the **Equipment (Public Safety) Act 1994** by Acts and subordinate instruments.

Accident Compensation (Occupational Health and Safety) Act 1996, No. 13/1996

Assent Date: 28.6.96
Commencement Date: Ss 1, 2, 9 on 28.6.96: s. 2(1); rest of Act on 2.7.96:
Special Gazette (No. 75) 2.7.96 p. 1
Current State: All of Act in operation

Accident Compensation (Miscellaneous Amendment) Act 1997, No. 107/1997

Assent Date: 23.12.97
Commencement Date: S. 70 on 23.12.97: s. 2(1), s. 71 on 1.7.98: s. 2(7)
Current State: This information relates only to the provision/s
amending the **Equipment (Public Safety) Act 1994**

**Tribunals and Licensing Authorities (Miscellaneous Amendments) Act 1998,
No. 52/1998**

Assent Date: 2.6.98
Commencement Date: S. 311(Sch. 1 items 28.1–28.3) on 1.7.98: Government
Gazette 18.6.98 p. 1512
Current State: This information relates only to the provision/s
amending the **Equipment (Public Safety) Act 1994**

Occupational Health and Safety Act 2004, No. 107/2004 (as amended by
No. 31/2005)

Assent Date: 21.12.04
Commencement Date: S. 180(1) on 1.7.05: s. 3(1)
Current State: This information relates only to the provision/s
amending the **Equipment (Public Safety) Act 1994**

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

Assent Date: 21.6.05
Commencement Date: Ss 24–34 on 1.7.05: s. 2
Current State: This information relates only to the provision/s
amending the **Equipment (Public Safety) Act 1994**

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

Assent Date: 13.6.06
Commencement Date: S. 94(Sch. item 16) on 1.7.06: Government Gazette
29.6.06 p. 1315
Current State: This information relates only to the provision/s
amending the **Equipment (Public Safety) Act 1994**

Equipment (Public Safety) Act 1994
No. 21 of 1994

Endnotes

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

Assent Date: 29.8.06
Commencement Date: S. 61(Sch. item 12) on 30.8.06: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Equipment (Public Safety) Act 1994**

3. Explanatory Details

¹ S. 3(1) def. of *Authority*: Sections 42–49 of the **Accident Compensation (Occupational Health and Safety) Act 1996**, No. 13/1996 read as follows:

Division 2—Transitional provisions

42 Definitions

In this Division—

former inspector means an inspector under section 12 of the Principal Act as in force immediately before the commencement of Division 1 of this Part.

43 Interpretation of Legislation Act 1984 not affected

Nothing in this Division affects or takes away from the **Interpretation of Legislation Act 1984**.

44 Superseded references

- (1) On the commencement of this section, a reference in the regulations made under the Principal Act or any instrument or other document issued, served, made or given under the Principal Act or the regulations made under that Act to the Minister is deemed to be a reference to the Authority.
- (2) Subsection (1) does not apply to—
 - (a) any guidelines issued by the Minister under section 28(5) of the Principal Act; or
 - (b) any code of practice approved by the Minister or notice caused to be published by the Minister under section 33 of the Principal Act.

45 Proceedings in relation to Minister

- (1) On the commencement of this section, the Authority is substituted for the Minister as a party in any proceedings commenced or made by or against or in relation to the Minister under the Principal Act or the regulations made under that Act and existing immediately before that commencement.
- (2) On the commencement of this section, any application made or notification, notice or request given to the Minister under the Principal Act or the regulations made under that Act is deemed to be an application made or notification, notice or request given to the Authority.
- (3) On and after the commencement of this section, the Authority may continue and complete any other continuing matter or thing commenced by or against or in relation to the Minister under the Principal Act or the regulations made under that Act and existing immediately before that commencement.

46 Documents etc. issued by Minister

- (1) On and after the commencement of this section—
 - (a) any confirmation, condition, exemption, notice, requirement, determination, approval or other instrument or document issued, served, granted, made or given under the Principal Act or the regulations made under the Principal Act by the Minister is deemed to have been issued, served, granted, made or given by the Authority; and
 - (b) any action taken or decision made under the Principal Act or the regulations made under the Principal Act by the Minister is deemed to have been taken or made by the Authority.
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- (2) This section does not apply to—
- (a) any guidelines issued by the Minister under section 28(5) of the Principal Act; or
 - (b) any code of practice approved by the Minister or notice caused to be published by the Minister under section 33 of the Principal Act.

47 Inspectors deemed to be inspectors appointed by Authority

On and after the commencement of this section—

- (a) any former inspector holding office immediately before that commencement is deemed to be an inspector appointed by the Authority under section 12 of the Principal Act as amended by Division 1 of this Part; and
- (b) a certificate of appointment provided by the Minister under section 12 of the Principal Act in respect of the appointment of a former inspector is deemed to be a certificate of appointment provided by the Authority under that section as amended by Division 1 of this Part; and
- (c) an identification card provided to a former inspector by the Minister under section 12 of the Principal Act is deemed to be an identification card provided to an inspector by the Authority under that section as amended by Division 1 of this Part.

48 Proceedings in relation to inspectors

On and after the commencement of this section, an inspector appointed by the Authority may continue and complete any proceedings under the Principal Act or the regulations made under that Act commenced or made by or against or in relation to a former inspector and existing immediately before that commencement.

49 Documents etc. issued by inspector

On and after the commencement of this section—

- (a) any notice, requirement, direction or other instrument or document issued, served, made or given by a former inspector under the Principal Act or the regulations made under that Act is deemed to have been issued, served, made or given by an inspector appointed by the Authority; and
- (b) any action taken or decision made under the Principal Act or the regulations made under that Act by a former inspector is deemed to have been taken by an inspector appointed by the Authority.

² S. 33(5): See note 1.

³ S. 36: See note 1.

⁴ Sch: See note 1.