

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
THE SENATE

(Presented and read a first time, 11 November 1992)

(MINISTER FOR INDUSTRIAL RELATIONS, SENATOR COOK)

A BILL

FOR

An Act to amend the *Petroleum (Submerged Lands) Act 1967* to promote the occupational health and safety of persons employed in the designated areas, and for related purposes

The Parliament of Australia enacts:

Short title etc.

1. (1) This Act may be cited as the *Petroleum (Submerged Lands) Amendment Act 1992*.

5 (2) In this Act, "Principal Act" means the *Petroleum (Submerged Lands) Act 1967*¹.

Commencement

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

10 (2) If a provision of this Act does not commence under subsection (1) within a period of 6 months beginning on the day on which this

Act receives the Royal Assent, the provision commences on the day following the end of that period.

3. After section 5A of the Principal Act the following section is inserted:

Definitions relating to occupational health and safety

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“5AA. Expressions in Schedule 7 have the meanings defined in Part 1 of that Schedule.”.

Work practices

4. Section 97 of the Principal Act is amended:

- (a) by omitting from subsection (1) “and shall secure the safety, health and welfare of persons engaged in those operations in or about the permit area, lease area or licence area”;
- (b) by omitting from subsection (3) “and shall secure the safety, health and welfare of persons engaged in operations in connexion with the pipeline”;
- (c) by omitting from subsection (5) “and shall secure the safety, health and welfare of persons engaged in those operations in or about that area”.

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5. After Division 6A of Part III of the Principal Act the following Division is inserted:

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“Division 6B—Occupational Health and Safety

Application of occupational health and safety laws

“140H.(1) Subject to subsection (2), Schedule 7 applies in relation to each adjacent area.

“(2) Schedule 7 does not apply in relation to an adjacent area in respect of a State or the Northern Territory to the extent that the law of the State or Territory provides for matters relating to the occupational health and safety of persons employed in the area.

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“(3) Subsection (2) has effect in relation to the adjacent area in respect of the Territory of Ashmore and Cartier Islands as if that area formed part of the adjacent area in respect of the Northern Territory.”.

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Schedule—occupational health and safety

6. The Principal Act is amended by adding at the end the Schedule set out in the Schedule to this Act.



SCHEDULE Section 6

NEW SCHEDULE 7 TO BE ADDED TO PRINCIPAL ACT

SCHEDULE 7 Section 140H

OCCUPATIONAL HEALTH AND SAFETY

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OCCUPATIONAL HEALTH AND SAFETY
PART 1—PRELIMINARY

Objects

1. The objects of this Schedule are, in relation to undertakings in the adjacent areas:

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

Definitions

2. In this Schedule, unless the contrary intention appears:

“**accident**” includes the contraction of a disease;

“**clause**” means a clause of this Schedule;

“**contract**” includes an arrangement or understanding;

“**contractor**” means an individual who does work in connection with an undertaking under a contract between an employer and that person or any other person (whether an individual or not);

“**contravention**”, if the contravention is an offence against this Schedule or the regulations, includes an offence against:

(a) section 6, 7 or 7A of the *Crimes Act 1914*; or

(b) subsection 86(1) of that Act under paragraph (a) of that subsection;

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

“**designated work group**” means a group of employees established as a designated work group under clause 12, or that group as varied in accordance with that clause, and, in relation to an employer, means such a group that consists entirely of employees of that employer;

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

“**employer**” means an employer who carries on an activity to which Part III of this Act applies;

SCHEDULE—continued

“improvement notice” means an improvement notice issued under subclause 36(1);

“investigation” means an investigation conducted under Part 4 of this Schedule;

“investigator” means a person appointed under clause 29 to be an investigator;

“involved union” means:

- (a) in relation to an employee of a particular employer—a registered union of which the employee is a member, if the employee is qualified to be a member because of the work the employee performs for that employer; or
- (b) in relation to a designated work group—a registered union of which an employee in the group is a member, if the employee is qualified to be a member because of the work the employee performs as an employee in the group;

“own” includes own jointly or own in part;

“paragraph” means a paragraph of a provision of this Schedule;

“Part” means a Part of this Schedule;

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

“prohibition notice” means a prohibition notice issued under subclause 35(1);

“registered union” means:

- (a) an organisation of employees within the meaning of the *Industrial Relations Act 1988*; or
- (b) an organisation of employees registered under a State Act that deals with industrial relations; or
- (c) a body that is declared by the regulations to be a registered union for the purposes of this Schedule;

“regulations” means regulations made under section 157 for the purposes of this Schedule;

“reviewing authority” means the Australian Industrial Relations Commission;

“work” means work directly or indirectly connected with an activity to which Part III of this Act applies;

“workplace” means anywhere a person works.

Functions conferred on Designated Authority

3. The following additional functions are conferred on the Designated Authority:

- (a) to ensure, in accordance with this Schedule and the regulations, that the obligations imposed by or under this Schedule and the regulations are complied with;
- (b) to advise employers, employees or contractors, either on its

SCHEDULE—continued

- own initiative or on request, on occupational health and safety matters;
- (c) to collect, interpret and report information relating to occupational health and safety;
 - (d) to formulate policies and strategies relating to the occupational health and safety of employees;
 - (e) to accredit occupational health and safety training courses for the purposes of clause 15;
 - (f) to liaise with other bodies concerned with occupational health and safety.

PART 2—OCCUPATIONAL HEALTH AND SAFETY

Division 1—General duties relating to occupational health and safety

Duties of employers in relation to their employees etc.

4.(1) An employer must take all reasonable steps to protect the health and safety at work of employees.

Penalty: \$100,000.

(2) Without limiting the generality of subclause (1), an employer contravenes that subclause if the employer fails to take all reasonable steps:

- (a) to provide and maintain a working environment (including plant and systems of work) that:
 - (i) is safe for employees and without risk to their health; and
 - (ii) provides adequate facilities for their welfare at work; and
- (b) in relation to any workplace under the employer's control, to:
 - (i) ensure the workplace is safe for employees and without risk to their health; and
 - (ii) provide and maintain a means of access to, and egress from, the workplace that is safe for employees and without risk to their health; and
- (c) to ensure the safety at work of, and the absence of risks at work to the health of, employees in connection with the use, handling, storage or transport of plant or of substances; and
- (d) to develop, in consultation with any involved unions in relation to the employees, and with such other persons as the employer considers appropriate, a policy, relating to occupational health and safety, that will:
 - (i) enable the employer and the employees to co-operate effectively in promoting and developing measures to

SCHEDULE—continued

ensure the employees' health, safety and welfare at work;
and

- (ii) provide adequate mechanisms for reviewing the effectiveness of measures; and
- (e) to provide to employees, in appropriate languages, the information, instruction, training and supervision necessary to enable them to perform their work in a way that is safe and without risk to their health.

(3) A policy relating to occupational health and safety referred to in paragraph (2)(d) that is developed in consultation with involved unions must provide for making an agreement between the employer and the involved unions that:

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

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

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

(5) Without limiting the generality of subclause (1) so far as it applies in relation to employees, the employer contravenes that subclause if the employer fails to take all reasonable steps:

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

Duties of employers in relation to third parties

5. An employer must take all reasonable steps to ensure that persons at or near a workplace under the employer's control who are not the employer's employees or contractors are not exposed to risk to their health or safety arising from the conduct of the employer's undertaking.
Penalty: \$100,000.

SCHEDULE—continued

Duties of manufacturers in relation to plant and substances

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

- (a) to ensure that the plant is so designed and constructed as to be, when properly used, safe for employees and without risk to their health; and
- (b) to carry out, or cause to be carried out, the research, testing and examination necessary in order to discover, and to eliminate or minimise, any risk to the health or safety of employees that may arise from the use of the plant; and
- (c) to make available to an employer, in connection with the use of the plant by employees at work, adequate information about:
 - (i) the use for which it is designed and has been tested; and
 - (ii) details of its design and construction; and
 - (iii) any conditions necessary to ensure that, when put to the use for which it was designed and tested, it will be safe for employees and without risk to their health.

Penalty: \$20,000.

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

- (a) to ensure that the substance is so manufactured as to be, when properly used, safe for employees and without risk to their health; and
- (b) to carry out, or cause to be carried out, the research, testing and examination necessary to discover, and to eliminate or minimise, any risk to the health and safety of employees that may arise from the use of the substance; and
- (c) to make available to an employer, in connection with the use of the substance by employees at work, adequate information concerning:
 - (i) the use for which it is manufactured and has been tested; and
 - (ii) details of its composition; and
 - (iii) any conditions necessary to ensure that, when put to the use for which it was manufactured and tested, it will be safe for employees and without risk to their health; and
 - (iv) the first aid and medical procedures that should be followed if the substance causes injury.

Penalty: \$20,000.

SCHEDULE—continued

(3) If:

- (a) plant or a substance is imported into Australia by a person who is not its manufacturer; and
 - (b) at the time of the importation, the manufacturer of the plant or substance does not have a place of business in Australia;
- the first-mentioned person is, for the purposes of this clause, taken to be the manufacturer of the plant or substance.

(4) This clause does not affect the operation of the *Trade Practices Act 1974*, or of any other law of the Commonwealth, a State or a Territory that imposes an obligation on a manufacturer in respect of defective goods or in respect of information to be supplied in relation to goods.

Duties of suppliers in relation to plant and substances

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

- (a) to ensure that, at the time of supply, the plant or substance is in such condition as to be, when properly used, safe for employees and without risk to their health; and
- (b) to carry out, or cause to be carried out, the research, testing and examination necessary to discover, and to eliminate or minimise, any risk to the health or safety of employees that may arise from the condition of the plant or substance; and
- (c) to make available to an employer, in connection with the use of the plant or substance by employees at work, adequate information about:
 - (i) the condition of the plant or substance at the time of supply; and
 - (ii) any risk to the health and safety of employees to which the condition of the plant or substance may give rise unless it is properly used; and
 - (iii) the steps that need to be taken in order to eliminate such risk; and
 - (iv) in the case of a substance—the first aid and medical procedures that should be followed if the condition of the substance causes injury to an employee.

Penalty: \$20,000.

(2) For the purposes of subclause (1), where a person (in this subclause called the “**ostensible supplier**”) supplies to an employer any plant or substance that is to be used by employees at work, and the ostensible supplier:

- (a) carries on the business of financing the acquisition or the use of goods by other persons; and

SCHEDULE—continued

(b) has, in the course of that business, acquired an interest in the plant or substance solely for the purpose of financing its acquisition by the employer from a third person, or its provision to the employer by a third person; and

(c) has not taken possession of the plant or substance or has taken possession of the plant or substance solely for the purpose of passing possession of the plant or substance to that employer;

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

(3) This clause does not affect the operation of the *Trade Practices Act 1974*, or of any other law of the Commonwealth, a State or a Territory that imposes an obligation in respect of the sale or supply of goods or in respect of the information to be supplied in relation to goods.

Duties of persons erecting or installing plant in a workplace

8.(1) A person who erects or installs any plant in a workplace for the use of employees at work must take all reasonable steps to ensure that the plant is not erected or installed in such a way that it is unsafe for employees who use the plant or constitutes a risk to their health.

Penalty: \$20,000.

(2) This clause does not affect the operation of the *Trade Practices Act 1974*, or of any other law of the Commonwealth, a State or a Territory that imposes an obligation in respect of the erection or installation of goods or the supply of services.

Duties of employees in relation to occupational health and safety

9.(1) An employee must, at all times while at work, take all reasonable steps:

(a) to ensure that the employee does not take any action, or make any omission, that creates a risk, or increases an existing risk, to the health or safety of the employee, or of other persons (whether employees or not) at or near the place at which the employee is at work; and

(b) in respect of any duty or obligation imposed on the employee's employer, or on any other person, by or under this Schedule or the regulations, to co-operate with the employer, or that other person, to the extent necessary to enable the employer or other person to fulfil that duty or obligation; and

(c) to use equipment, in accordance with any instructions given by the employer consistent with its safe and proper use, that is:

(i) supplied to the employee by the employer; and

(ii) necessary to protect the health and safety of the employee,

SCHEDULE—continued

or of other persons (whether employees or not) at or near the place at which the employee is at work.

Penalty: \$5,000.

(2) Subclause (1) does not imply that the choice or manner of use, or choice and manner of use, of equipment of the kind referred to in subparagraph (1)(c)(ii) is not a matter that may be, consistently with this Schedule and the regulations:

- (a) agreed on between the employer and any relevant involved union; or
- (b) agreed on by a health and safety committee.

(3) If an agreement of the kind referred to in paragraph (2)(a) (whether or not entered into before the commencement of this clause) or of the kind referred to in paragraph (2)(b) provides a process for choosing equipment of a particular kind that is to be provided by the employer, action must not be taken against an employee for failure to use equipment of that kind that is so provided unless the equipment has been chosen in accordance with that process.

(4) If an agreement of the kind referred to in paragraph (2)(a) (whether or not entered into before the commencement of this clause) or of the kind referred to in paragraph (2)(b) provides a process for determining the manner of use of equipment of a particular kind, action must not be taken against an employee for failure to use, in the manner required by the employer, equipment of that kind that is so provided unless the manner has been determined in accordance with that process.

Reliance on information supplied or results of research

10.(1) Without limiting the generality of what constitutes taking reasonable steps as required by clause 4 or 5, for the purpose of the application of that clause to the use of plant or a substance, a person on whom an obligation is imposed under that clause is regarded as having taken such reasonable steps as that clause requires, in relation to the use of the plant or substance, to the extent that:

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

(2) Without limiting the generality of what constitutes taking reasonable steps as required by clause 8, for the purpose of the application of that clause to the erection or installation of plant in a workplace, a person on whom an obligation is imposed under that

SCHEDULE—continued

clause is regarded as having taken such reasonable steps as that clause requires to the extent that:

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

(3) Without limiting the generality of what constitutes taking reasonable steps as required by clause 6 or 7, for the purpose of the application of that clause to carrying out research, testing and examining plant or a substance, a person on whom an obligation is imposed under that clause is regarded as having taken such reasonable steps as that clause requires, in relation to carrying out research, testing and examining the plant or substance, to the extent that:

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

Division 2—Specific duties relating to occupational health and safety

Regulations relating to occupational health and safety

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

(2) Without limiting the generality of subclause (1), those regulations may make provision for any or all of the following:

- (a) prohibiting or restricting the performance of all work or specified work at a workplace or by employees or contractors at work;
- (b) prohibiting or restricting the use of all plant or specified plant at a workplace or by employees or contractors at work;
- (c) prohibiting or restricting the carrying out of all processes or a specified process at a workplace or by employees or contractors at work;
- (d) prohibiting or restricting the storage or use of all substances or specified substances at a workplace or by employees or contractors at work;
- (e) specifying the form in which information required to be made available to an employer under paragraph 6(1)(c) or 7(1)(c) is to be so made available;
- (f) prohibiting, except in accordance with licences granted under

SCHEDULE—continued

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

PART 3—WORKPLACE ARRANGEMENTS

Division 1—Health and safety representatives

Designated work groups

12.(1) A request to an employer to enter into consultations to establish designated work groups in respect of employees of the employer, or to vary designated work groups that have already been established, may be made by:

SCHEDULE—continued

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

SCHEDULE—continued

(b) that best takes account of the need for any health and safety representative selected for that designated work group to be accessible to each employee in the group.

(8) The parties to the consultations must have regard, in particular, to:

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

(9) The designated work groups must be established or varied in such a way that, so far as practicable, each of the employees is in a designated work group.

(10) All the employees may be in one designated work group.

Health and safety representatives

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

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

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

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

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

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

SCHEDULE—continued

person authorised by the Designated Authority to conduct elections under this clause.

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

- (a) the employee is not disqualified under clause 21; and
- (b) if an involved union in relation to the group is conducting the election—the employee is nominated by an involved union in relation to the group.

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

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

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

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

must, as soon as practicable after the person has been so selected, inform the employer of the name of the person so selected.

(9) As soon as practicable after being so informed, the employer must cause a notice of the selection to be displayed in a prominent place at such workplaces, under the employer's control, as will allow all the employees in the group to be notified of the selection.

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

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

Term of office

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

- (a) if, in consultations that took place under clause 12, the parties to the consultations agreed to the period for which the health and safety representative for the group was to hold office—for such a period; or
- (b) if paragraph (a) does not apply—for 2 years;

SCHEDULE—continued

beginning at the first moment of the day on which he or she was selected, but is eligible to be selected for further terms of office.

Training of health and safety representatives

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

(2) The employer must permit the representative to take such time off work, without loss of remuneration or other entitlements, as is necessary to undertake the training.

Powers of health and safety representatives

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

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

SCHEDULE—continued

group to the health and safety representative about the health and safety of any of the employees at work; and

- (c) with the consent of the employee concerned, be present at any interview, about health and safety at work, between an employee in the group and:
 - (i) an investigator; or
 - (ii) the employer or a person representing the employer; and
- (d) obtain access to:
 - (i) any information under the employer's control relating to risks to health and safety of any employees:
 - (A) at any workplace under the employer's control; or
 - (B) arising from the conduct by the employer of an undertaking or from plant or substances used for the purposes of the undertaking; and
 - (ii) subject to subclause (6), any information under the employer's control relating to the health and safety of any of the employees; and
- (e) issue provisional improvement notices in accordance with clause 17.

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

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

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

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

(4) An employer does not, because of the agreement under subclause (3) to the provision of assistance by a consultant, become liable for any remuneration or other expenses incurred in connection with the consultant's activities.

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

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

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

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

- (a) to information in respect of which the employer is entitled to claim, and does claim, legal professional privilege; or
- (b) to information of a confidential medical nature relating to a person who is or was an employee unless:
 - (i) the person has delivered to the employer a written authority permitting the health and safety representative, or the health and safety representative and the consultant, as the case requires, to have access to the information; or
 - (ii) the information is in a form that does not identify the person or enable the identity of the person to be discovered.

(7) This Schedule does not:

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

Provisional improvement notices

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

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

being a contravention that affects or that may affect one or more employees included in the group, the representative must consult with the person supervising the work performed by the employee or employees in an attempt to reach agreement on rectifying the contravention or preventing the likely contravention.

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

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

(4) The notice must:

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

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

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

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

- (a) if the notice is issued to an employee in connection with work performed by the employee for an employer—that employer; and
- (b) if the notice relates to any workplace, plant, substance or thing that is owned by a person, not being the responsible person or a person who is an employer referred to in paragraph (a)—that owner; and
- (c) if the notice is issued to a person (not being an employer) who owns any workplace, plant, substance or thing because of which a contravention of this Schedule or the regulations has occurred or is likely to occur—the employer of the employees who work in that workplace or who use that plant, substance or thing.

Effect of provisional improvement notice

18.(1) Within 7 days after a notice is issued under clause 17, the responsible person, or any other person, to whom a copy of the notice has been given under subclause 17(7) may make a request to the

SCHEDULE—continued

Designated Authority or to an investigator that an investigation of the matter be conducted.

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

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

- (a) confirm, vary or cancel the notice and notify the responsible person and any person to whom a copy of the notice has been given under subclause 17(2) accordingly; and
- (b) make such decisions, and exercise such powers, under Part 4, as the investigator considers necessary in relation to the work.

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

(5) If the notice is issued to an employer, the employer must:

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

(6) The notice ceases to have effect if:

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

(7) The responsible person:

- (a) must ensure that, to the extent that the notice relates to any matter over which the person has control, the notice is complied with; and
- (b) must take reasonable steps to inform the health and safety representative who issued the notice of the action taken to comply with the notice.

(8) For the purposes of clause 37, if the investigator confirms or varies the notice, the investigator is taken to have decided, under clause 36, to issue an improvement notice in those terms.

SCHEDULE—continued

Duties of employers in relation to health and safety representatives

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

- (a) upon being requested to do so by the representative, consult with the representative on the implementation of changes at any workplace at which some or all of the employees in the group perform work for the employer, being changes that may affect the health and safety at work of the employees; and
- (b) in respect of a workplace at which some or all of the employees perform work for the employer:
 - (i) permit the representative to make such inspection of the workplace as the representative is entitled to make in accordance with subparagraph 16(1)(a)(i), and to accompany an investigator during any investigation at the workplace by the investigator; and
 - (ii) if there is no health and safety committee in respect of the employees at the workplace—upon being requested to do so by the representative, consult with the representative about the development, implementation and review of measures to ensure the health and safety at work of those employees; and
- (c) permit the representative to be present at any interview at which the representative is entitled to be present under paragraph 16(1)(c); and
- (d) subject to subclauses (2) and (3), provide to the representative access to any information to which the representative is entitled to obtain access under subparagraph 16(1)(d)(i) or (ii) and to which access has been requested; and
- (e) permit the representative to take such time off work, without loss of remuneration or other entitlements, as is necessary to exercise the powers of a health and safety representative; and
- (f) provide the representative with access to such facilities as are:
 - (i) prescribed for the purposes of this paragraph; or
 - (ii) necessary for the purposes of exercising the powers of a health and safety representative.

(2) An employer must not permit a health and safety representative to have access to information of a confidential medical nature under the control of the employer, being information relating to a person who is or was an employee, unless:

- (a) the person has delivered to the employer a written authority permitting the representative to have access to the information;
or

SCHEDULE—continued

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

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

Resignation etc. of health and safety representatives

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

- (a) the person resigns as the health and safety representative; or
- (b) the person ceases to be an employee included in the designated work group; or
- (c) the person's term of office expires without the person having been selected, under clause 13, to be the health and safety representative for the designated work group for a further term; or
- (d) the person is disqualified under clause 21.

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

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

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

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

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

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

- (a) the employees included in the group; and
- (b) the employer of all those employees; and
- (c) if the person was last selected as the health and safety representative in an election conducted by an involved union

SCHEDULE—continued

in relation to the group—the involved union, in relation to the group, that nominated the person as a candidate in the election; that the person has ceased to be the health and safety representative for that designated work group.

Disqualification of health and safety representatives

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

- (a) that action taken by the representative in the exercise or purported exercise of a power under subclause 16(1) or any other provision of this Schedule was taken:
 - (i) with the intention of causing harm to the employer or to an undertaking of the employer; or
 - (ii) unreasonably, capriciously or not for the purpose for which the power was conferred on the representative;
- (b) that the representative has intentionally used, or disclosed to another person, for a purpose that is not connected with the exercise of a power of a health and safety representative, information acquired from the employer.

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

- (a) the harm (if any) that was caused to the employer or to an undertaking of the employer as a result of the action of the representative; and
 - (b) the past record of the representative in exercising the powers of a health and safety representative; and
 - (c) the effect (if any) on the public interest of the action of the representative; and
 - (d) such other matters as the Authority thinks relevant;
- disqualify the representative, for a specified period not exceeding 5 years, from being a health and safety representative for any designated work group.

Deputy health and safety representatives

22.(1) One deputy health and safety representative may be selected for each designated work group for which a health and safety representative has been selected.

(2) A deputy health and safety representative is to be selected in the same way as a health and safety representative under clause 13.

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(3) If the health and safety representative for a designated work group ceases to be the health and safety representative or is unable (because of absence or for any other reason) to exercise the powers of a health and safety representative:

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

Division 2—Health and safety committees

Health and safety committees

23.(1) A health and safety committee must be established in respect of employees at a particular workplace if:

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

(2) The health and safety committee consists of:

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

(3) The agreement referred to in paragraph (2)(a) may:

- (a) specify the persons who are to be members to represent the interests of management; and
- (b) provide for the way in which persons who are to be members to represent the interests of employees are to be chosen.

(4) If regulations made for the purposes of this clause specify procedures for the selection of persons as members of health and safety committees, to represent the interests of employees, an agreement

SCHEDULE—continued

referred to in paragraph (2)(a) must not provide for such members to be chosen in a way inconsistent with the regulations.

(5) A health and safety committee must hold meetings at least once every 3 months.

(6) The procedure at meetings of a health and safety committee must, except to the extent provided for by the regulations, be the procedure agreed upon by the committee.

(7) A health and safety committee must cause minutes of its meetings to be kept, and must retain those minutes for a period of not less than 3 years.

(8) This clause does not prevent an employer from establishing, in consultation with registered unions or any other persons, committees concerned with occupational health and safety in relation to undertakings carried on by the employer.

Functions of health and safety committees

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

- (a) to assist the employer:
 - (i) to develop and implement measures designed to protect; and
 - (ii) to review and update measures used to protect; the health and safety at work of employees;
- (b) to facilitate co-operation between the employer and employees in relation to occupational health and safety matters;
- (c) to assist the employer to disseminate among employees, in appropriate languages, information relating to health and safety at work;
- (d) such functions as are prescribed;
- (e) such other functions as are agreed upon between the employer and the health and safety committee.

(2) A health and safety committee has power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions.

(3) This Schedule does not:

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

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Duties of employers in relation to health and safety committees

25.(1) If there is a health and safety committee, the employer must:

- (a) subject to subclauses (2) and (3), make available to the committee any information possessed by the employer relating to risks to the health and safety of employees:
 - (i) at any workplace under the employer's control; or
 - (ii) arising from the conduct by the employer of an undertaking, or from plant or substances used for the purposes of the undertaking; and
- (b) permit any member of the committee who is an employee to take such time off work, without loss of remuneration or other entitlements, as is necessary for the member adequately to participate in the performance by the committee of its functions.

(2) An employer must not make available to a health and safety committee information of a confidential medical nature relating to a person who is or was an employee, unless:

- (a) the person has delivered to the employer an authority permitting the information to be made available to the committee; or
- (b) the information is in a form that does not identify the person or enable the identity of the person to be discovered.

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

Division 3—Emergency procedures

Action by health and safety representatives

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

- (a) inform a person (in this clause called a “**supervisor**”) supervising the employee or employees in the performance of the work of the threat to health or safety; or
- (b) if no supervisor can be contacted immediately—direct the employee or employees to cease, in a safe manner, to perform the work, and as soon as practicable inform a supervisor that the direction has been given.

(2) If a supervisor is informed under paragraph (1)(a) of a threat to the health and safety of one or more of the employees, the supervisor must take such action as he or she considers appropriate to remove

SCHEDULE—continued

that threat, and any such action may include directing the employee or employees to cease, in a safe manner, to perform the work.

(3) If a health and safety representative:

(a) is unable to agree with a supervisor whom the representative has informed under paragraph (1)(a) of a threat to the health or safety of persons performing work, and who has taken such action as the supervisor considers appropriate to remove that threat, that the action taken was sufficient to remove that threat; or

(b) is unable to agree with a supervisor whom the representative has informed under paragraph (1)(b) that there is a need for a direction under that paragraph;

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

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

Directions to perform other work

27. If an employee has ceased to perform work, in accordance with a direction by a health and safety representative under paragraph 26(1)(b), not being a cessation of work that continues after:

(a) the health and safety representative has agreed with a person supervising work at the workplace where the work was being performed, that the cessation of work was not, or is no longer, necessary; or

(b) an investigator has, under subclause 26(4), made a decision that has the effect that the employee should perform the work;

the employer may direct the employee to perform suitable alternative work, and the employee is to be taken, for all purposes, to be required to perform that other work under the terms and conditions of the employee's employment.

PART 4—ADVICE AND INVESTIGATIONS

Division 1—Advice

Designated Authority may refer persons seeking advice to experts

28. If the Designated Authority has been requested to advise an employer, employee or contractor about an occupational health and safety matter, it may, in the exercise of its function to provide that

SCHEDULE—continued

advice, refer the employer, employee or contractor to a person who has special knowledge or experience relevant to the request.

Division 2—Investigations

Investigators

29.(1) A person who, under section 125, holds an appointment as an inspector in relation to an adjacent area has the powers, functions and duties of an investigator under this Schedule.

(2) The Designated Authority may, in writing, give directions specifying the manner in which, and any conditions subject to which, powers conferred on investigators under this Schedule are to be exercised. If it does so, the powers of investigators must be exercised in accordance with those directions.

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

Investigations

30.(1) An investigator may, at any time, conduct an investigation:

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

(2) The Designated Authority may direct an investigator to conduct an investigation:

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

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

(3) An involved union may make a request to an investigator or to the Designated Authority that an investigation be conducted at a

SCHEDULE—continued

workplace at which an employee, who is a member of the union, performs work for an employer.

Power of entry

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

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

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

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

and must, upon being requested to do so by the person referred to in paragraph (a), produce for inspection by that person:

- (c) the investigator's certificate issued under section 125; and
- (d) a copy of the Designated Authority's written direction (if any) to conduct the investigation; and
- (e) a copy of the restrictions (if any) imposed on the powers of the investigator under subclause 29(3).

(3) If an investigator who has entered a workplace fails to produce those documents for inspection upon being so requested, the investigator cannot remain at the workplace.

Power to require assistance and information

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

- (a) any employer; or
- (b) any person representing an employer; or
- (c) any owner or occupier of a workplace at which the investigation is being conducted; or
- (d) any employee or contractor;

SCHEDULE—continued

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

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

Penalty: Imprisonment for 6 months.

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

Penalty: Imprisonment for 6 months.

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

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

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

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

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

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

(3) If the investigator gives the notice to an employer, the employer must cause a copy of the notice to be displayed in a prominent place at the workplace from which the plant, substance or thing was removed.

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

SCHEDULE—continued

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

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

Power to direct that workplace etc. not be disturbed

34.(1) In conducting an investigation, an investigator may, if he or she is satisfied that it is reasonably necessary to give a direction in order to:

- (a) remove an immediate threat to the health or safety of any person; or
- (b) allow the inspection, examination or taking of measurements of, or conducting of tests concerning, a workplace or any plant, substance or thing at a workplace;

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

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

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

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

(3) If an investigator gives a notice to a person under subclause (1), that person must cause the notice to be displayed in a prominent place at the workplace:

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

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

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

SCHEDULE—continued

(ii) involving the plant, substance or thing;
to which the direction relates—that representative;
of the direction and the reasons for giving it.

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

Penalty: \$25,000.

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

Power to issue prohibition notices

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

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

(3) The notice must:

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

(b) either:

(i) direct the employer to ensure that the activity is not engaged in; or

(ii) direct the employer to ensure that the activity is not engaged in in a specified manner, being a manner that may relate to any one or more of the following:

(A) any workplace, or part of a workplace, at which the activity is not to be engaged in;

(B) any plant or substance that is not to be used in connection with the activity;

(C) any procedure that is not to be followed in connection with the activity.

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

Penalty: \$25,000.

SCHEDULE—continued

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

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

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

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

(9) The employer must:

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

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

Power to issue improvement notices

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

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

the investigator may issue an improvement notice, in writing, to the person (in this clause called the "**responsible person**").

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

(3) The notice must:

- (a) specify the contravention that, in the investigator's opinion, is

SCHEDULE—continued

occurring or is likely to occur, and set out the reasons for that opinion; and

- (b) specify a period, being a period that is, in the investigator's opinion, reasonable, within which the responsible person is to take the action necessary to prevent any further contravention or to prevent the likely contravention, as the case may be.

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

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

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

Penalty: \$10,000.

(7) If the notice is issued to an employer, the employer must:

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

(8) Upon issuing the notice, the investigator must give a copy of the notice to:

- (a) if the notice is issued to an employee in connection with work performed by the employee—the employer; and
- (b) if the notice relates to any workplace, plant, substance or thing that is owned by a person, not being the responsible person or a person who is an employer referred to in paragraph (a)—that owner; and
- (c) where the notice is issued to a person (not being an employer) who owns any workplace, plant, substance or thing because of which a contravention of this Schedule or the regulations has occurred or is likely to occur—the employer of the employees who work in that workplace or who use that plant, substance or thing.

Appeals

37.(1) If an investigator, in conducting an investigation or having conducted an investigation:

- (a) decides, under clause 17, to confirm or vary a provisional improvement notice; or

SCHEDULE—continued

- (b) decides, under clause 33, to take possession of plant, a substance or a thing at a workplace; or
- (c) decides, under clause 34, to direct that a workplace, a part of a workplace, plant, a substance or a thing not be disturbed; or
- (d) decides, under clause 35, to issue a prohibition notice; or
- (e) decides, under clause 35, that an employer to whom a prohibition notice has been issued has not taken adequate action to remove the threat to health and safety that caused the notice to be issued; or
- (f) decides, under clause 36, to issue an improvement notice;

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

- (g) an employer affected by the decision; or
- (h) a person to whom a notice has been issued under subclause 17(2) or 36(1); or
- (j) the health and safety representative for a designated work group that includes an employee affected by the decision; or
- (k) an involved union in relation to such a designated work group; or
- (m) if there is no such designated work group—an involved union in relation to an employee who is affected by the decision; or
- (n) a person who owns any workplace, plant, substance or thing to which the decision referred to in paragraph (a), (b), (c) or (f) relates.

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

- (a) decides under clause 17 to cancel a provisional improvement notice; or
- (b) decides under clause 35 that an employer to whom a prohibition notice has been issued has taken adequate action to remove the threat to health and safety that caused the notice to be issued;

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

- (c) the health and safety representative for a designated work group that includes an employee affected by the decision; or
- (d) an involved union in relation to such a designated work group; or
- (e) if there is no such designated work group—an involved union in relation to an employee who is affected by the decision.

(3) Subject to this clause, the making of an appeal against a decision referred to in subclause (1) or (2) does not affect the operation of the decision or prevent the taking of action to implement the decision,

SCHEDULE—continued

except to the extent that the reviewing authority makes an order to the contrary.

(4) If the decision appealed against is a decision, under clause 36, to issue an improvement notice, the operation of the decision is suspended pending determination of the appeal, except to the extent that the reviewing authority makes an order to the contrary.

(5) If the decision appealed against is a decision of an investigator, under clause 17, to confirm or vary a provisional improvement notice whose operation has been suspended pending the investigation of the matter to which the notice relates, the operation of the notice is further suspended pending determination of the appeal, except to the extent that the reviewing authority makes an order to the contrary.

(6) The reviewing authority may affirm or revoke the decision appealed against under subclause (1) or (2) and may, if it revokes the decision, substitute such other decision of the kind appealed against as it thinks appropriate.

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

(8) If the decision appealed against is a decision, under clause 33, to take possession of plant, substance or a thing at a workplace, and the decision is not affirmed, the investigator who made the decision must ensure that, to the extent that the decision is not affirmed, the plant, substance or thing is returned to the workplace as soon as practicable.

Liability of investigators

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

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

Notices not to be tampered with or removed

39. A person must not, without reasonable excuse:

- (a) tamper with any notice that has been displayed under subclause 33(3), 34(3), 35(9) or 36(7) while that notice is so displayed; or
- (b) remove any notice that has been so displayed:
 - (i) in the case of a notice displayed under subclause 33(3)—
until the plant or thing to which the notice relates is returned to the workplace from which it was removed;
or
 - (ii) in the case of a notice displayed under subclause 34(3),

SCHEDULE—continued

35(9) or 36(7)—before the notice has ceased to have effect.

Penalty: Imprisonment for 6 months.

Division 3—Reports on investigations

Reports on investigations

40.(1) If an investigator has conducted an investigation, the investigator must, as soon as practicable, prepare a written report relating to the investigation and give the report to the Designated Authority.

(2) The report must include:

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

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

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

- (a) any action proposed to be taken as a result of the conclusions or recommendations contained in the report; and
- (b) if a notice has been issued under clause 35 or 36 in relation to work being performed for the employer—any action taken, or proposed to be taken, in respect of that notice;

and the employer must comply with the request.

(5) As soon as practicable after receiving a report, the employer must give a copy of the report, together with any written comment made by the Designated Authority on the report:

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

SCHEDULE—continued

PART 5—MISCELLANEOUS

Notifying and reporting accidents and dangerous occurrences

41.(1) If, at or near a workplace at which an undertaking is being conducted by an employer, there is, arising out of the conduct of the undertaking:

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

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

(2) Without limiting the provision that may be made by regulations for the purposes of this clause, the regulations (not being regulations made for the purpose of paragraph (1)(b)) may prescribe:

- (a) the time within which, and the manner in which, notice of an accident or dangerous occurrence is to be given, and the form of such a notice; and
- (b) the time within which, and the manner in which, a report of an accident or dangerous occurrence is to be given, and the form of such a report.

Records of accidents and dangerous occurrences to be kept

42.(1) An employer must maintain, in accordance with the regulations, a record of each accident or dangerous occurrence in respect of which the employer is required by clause 41 to notify the Designated Authority.

(2) Without limiting the provision that may be made by regulations for the purposes of this clause, the regulations may prescribe:

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

Codes of practice

43.(1) The regulations may prescribe codes of practice for the purpose of providing practical guidance to employers.

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

SCHEDULE—continued

Use of codes of practice in proceedings

44. If, in any proceedings for an offence against this Schedule or the regulations, it is alleged that a person contravened a provision of this Schedule or the regulations in relation to which a code of practice was in effect at the time of the alleged contravention:

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

that matter is treated as proved unless the court is satisfied that in respect of that matter the person complied with that provision of this Schedule or the regulations otherwise than by complying with the code of practice.

Interference etc. with equipment etc.

45. A person must not, without reasonable excuse, wilfully or recklessly:

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

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

Penalty: Imprisonment for 6 months.

Employer not to levy employees etc.

46. An employer must not levy, or permit to be levied, on any employees any charge in respect of anything done or provided, in accordance with this Schedule or the regulations, in order to ensure the health, safety or welfare of the employees at work.

Penalty: \$25,000.

Annual occupational health and safety report

47.(1) As soon as practicable after each 30 June, the Designated Authority must cause to be prepared a report on the operation of this Schedule and the regulations during the year ending on that date.

- (2) The report must include, in relation to the year:

SCHEDULE—continued

- (a) statistics, with appropriate details, of all accidents and dangerous occurrences notified to the Designated Authority under clause 41; and
- (b) details of all prosecutions instituted under this Schedule and the regulations; and
- (c) statistics, with appropriate details, of all:
 - (i) investigations conducted; and
 - (ii) instances of the taking of possession of plant, substances or things, or of the taking of samples of substances or things, under clause 33; and
 - (iii) directions given under clause 34; and
 - (iv) notices issued under clauses 35 and 36; and
 - (v) appeals instituted under clause 37 against investigators' decisions; and
 - (vi) requests made under subclause 40(4); and
- (d) such other matters as are prescribed.

(3) The Designated Authority must cause a copy of the report to be transmitted to the Joint Authority.

(4) If this clause commences within 3 months before 30 June, the first report may be prepared after the second 30 June following that commencement. In that event it must cover the whole period from that commencement to that second 30 June.

Employer not to dismiss etc. employees on certain grounds

48.(1) An employer must not:

- (a) dismiss an employee; or
- (b) injure an employee in his or her employment; or
- (c) prejudicially alter the employee's position (whether by deducting or withholding remuneration or by any other means); or
- (d) threaten to do any of those things;

because the employee:

- (e) has complained or proposes to complain about a matter concerning the health, safety or welfare of employees at work; or
- (f) has assisted or proposes to assist, by giving information or otherwise, the conduct of an investigation; or
- (g) has ceased, or proposes to cease, to perform work, in accordance with a direction by a health and safety representative under paragraph 26(1)(b), not being a cessation or proposed cessation that continues after:
 - (i) the health and safety representative has agreed with a

SCHEDULE—continued

person supervising the work that the cessation or proposed cessation was not, or is no longer, necessary; or

- (ii) an investigator has, under subclause 26(4), made a decision that has the effect that the employee should perform the work.

Penalty: \$25,000.

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

Institution of prosecutions

49.(1) Proceedings for an offence against this Schedule or the regulations may be instituted by the Designated Authority or by an investigator.

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

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

Conduct of directors, servants and agents

50.(1) If it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:

- (a) that the conduct was engaged in by a director, servant or agent of the body corporate within the scope of actual or apparent authority; and
- (b) that the director, servant or agent had the state of mind.

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

(3) If it is necessary to establish the state of mind of an individual in relation to particular conduct, it is sufficient to show:

SCHEDULE—continued

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

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

(5) If:

- (a) an individual is convicted of an offence; and
- (b) he or she would not have been convicted of the offence if subclauses (3) and (4) had not been enacted;

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

(6) A reference in subclause (1) or (3) to the state of mind of a person includes a reference to:

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

(7) This clause has effect for the purposes of any proceeding for an offence against this Schedule or the regulations.

Act not to give rise to other liabilities etc.

51. This Schedule does not:

- (a) confer a right of action in any civil proceeding in respect of any contravention of a provision of this Schedule or the regulations; or
- (b) confer a defence to an action in any civil proceeding or otherwise affect a right of action in any civil proceeding.

Circumstances preventing compliance with Schedule may be defence to prosecution

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

Regulations—general

53.(1) Without limiting the generality of the power to make regulations for the purposes of this Schedule, the regulations may prescribe:

- (a) procedures for the election of persons, under clause 13, as health and safety representatives; and

SCHEDULE—continued

- (b) procedures for the selection of persons, under clause 23, as members of health and safety committees, to represent the interests of employees; and
- (c) procedures to be followed at meetings of health and safety committees; and
- (d) the manner in which notices are to be served under this Schedule or the regulations; and
- (e) forms for the purposes of this Schedule or the regulations.

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

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

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

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

(4) In subclause (2), “**this Schedule**” includes regulations made for the purposes of this Schedule.

NOTE

- 1. No. 118, 1967, as amended. For previous amendments, see No. 1, 1968; Nos. 36 and 216, 1973; No. 57, 1974; No. 37, 1976; No. 80, 1980 (as amended by Nos. 79 and 176, 1981); No. 79, 1981; No. 80, 1982; Nos. 22 and 166, 1984; Nos. 80 and 132, 1985; Nos. 106 and 145, 1987; No. 127, 1988; Nos. 15 and 37, 1990; No. 75, 1991; and Nos. 17 and 104, 1992.





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