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ELIZABETHAE II REGINAE

A.D. 1990

No. 67 of 1990

An Act to amend the Occupational Health, Safety and Welfare Act, 1986.

[Assented to 20 December 1990]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Occupational Health, Safety and Welfare Act Amendment Act, 1990*.

(2) The *Occupational Health, Safety and Welfare Act, 1986*, is referred to in this Act as "the principal Act".

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Interpretation

3. Section 4 of the principal Act is amended—

(a) by striking out from the definition of "work group" in subsection (1) "designated" and substituting "constituted";

and

(b) by striking out from subsection (1) the definition of "workplace" and substituting the following definition:

"workplace" means any place (including any aircraft, ship or vehicle) where an employee or self-employed person works and includes any place where such a person goes while at work.

Membership of the Commission

4. Section 8 of the principal Act is amended—

(a) by striking out from subsection (1) "13" and substituting "15";

(b) by inserting "who is experienced in occupational health and one or more areas of public and environmental health," after "person" in paragraph (c) of subsection (1);

(c) by striking out from paragraph (d) of subsection (1) "four" and substituting "five"; and

(d) by striking out from paragraph (e) of subsection (1) "four" and substituting "five".

Proceedings of the Commission

5. Section 11 of the principal Act is amended by striking out from subsection (1) "Seven" and substituting "Eight".

Duties of employers

6. Section 19 of the principal Act is amended—

(a) by striking out subsection (2);

(b) by striking out from subsection (3) "An employer" and substituting "Without derogating from the operation of subsection (1), an employer";

and

(c) by striking out paragraph (d) of subsection (3) and the word immediately preceding that paragraph and substituting the following paragraphs:

(d) ensure that any employee who is to undertake work of a hazardous nature not previously performed by the employee receives proper information, instruction and training before he or she commences that work;

(e) ensure that any employee who is inexperienced in the performance of any work of a hazardous nature receives such supervision as is reasonably necessary to ensure his or her health and safety;

(f) ensure that any employee who could be put at risk by a change in the workplace, in any work or work practice, in any activity or process, or in any plant—

(i) is given proper information, instruction and training before the change occurs;

and

(ii) receives such supervision as is reasonably necessary to ensure his or her health and safety;

(g) ensure that any manager or supervisor is provided with such information, instruction and training as are necessary to ensure that each employee under his or her management or supervision is, while at work, so far as is reasonably practicable, safe from injury and risks to health;

(h) monitor working conditions at any workplace that is under the management and control of the employer;

and

(i) ensure that any accommodation, or eating, recreational or other facility, provided for the benefit of the employer's employees while they are at work, or in connection with the performance of their work, and under the management or control of the employer (either wholly or substantially), is maintained in a safe and healthy condition.

Employers' statements for health and safety at work

7. Section 20 of the principal Act is amended—

(a) by striking out from subsection (1) "of a prescribed class";

and

(b) by striking out subsection (2).

Insertion of s. 23a

8. The following section is inserted after section 23 of the principal Act:

Duties of designers and owners of buildings

23a. (1) A person who designs a building that is reasonably expected to comprise or include a workplace must—

- (a) ensure so far as is reasonably practicable that the building is designed so that people who might work in, on or about the workplace are, in doing so, safe from injury and risks to health;

and

- (b) ensure that the building complies in all respects with prescribed requirements (if any) applicable to it.

Penalty: Division 2 fine.

(2) The owner of a building that comprises or includes a workplace must—

- (a) ensure so far as is reasonably practicable that the building, and any fixtures or fittings within the building that are under the control of the owner, are in a condition that allows people who might work in, on or about the workplace to be safe from injury and risks to health;

and

- (b) ensure that the building complies in all respects with prescribed requirements (if any) applicable to it.

Penalty: Division 2 fine.

(3) In this section—

“building” includes a part of a building.

Duties of manufacturers, etc.

9. Section 24 of the principal Act is amended—

(a) by inserting after subsection (2) the following subsection:

(2a) Without derogating from the operation of subsections (1) and (2), where any structure is to be erected in the course of any work—

- (a) the person who designs the structure must ensure so far as is reasonably practicable that the structure is designed so that the persons who are required to erect it are, in doing so, safe from injury and risks to health;

- (b) any person who manufactures any materials to be used for the purposes of the structure must ensure so far as is reasonably practicable that the materials are manufactured so that the persons who are required to erect the structure are, in using, handling or otherwise dealing with the materials, safe from injury and risks to health;

- (c) any person who imports or supplies any materials to be used for the purposes of the structure must ensure so far as is reasonably practicable that the materials are in such a state as to be safe to any person who must use, handle or otherwise deal with the materials;

and

- (d) the person undertaking the erection of the structure must ensure so far as is reasonably practicable that the structure is safe during the course of its erection and subsequent use.;

and

(b) by inserting after subsection (3) the following subsection:

(4) In this section—

“structure” includes a part of a structure.

Substitution of s. 27

10. Section 27 of the principal Act is repealed and the following sections are substituted:

Interpretation

26a. In this Division—

“interested employee”, in relation to the constitution or composition of a work group or health and safety committee, means an employee whose interests could be affected by the constitution or composition of that group or committee (or a change in such constitution or composition):

“recognized member” of a group means a member of the group who—

(a) by agreement between the employer and—

(i) any interested employees;

or

(ii) a person appointed by such employees;

or

(b) in default of agreement, by determination of the Industrial Commission,

is recognised as a member of the group for the purposes of the election of any health and safety representative to represent the group, and the other provisions of this Division relating to the office of health and safety representative.

Health and safety representatives may represent groups

27. (1) A group of employees may elect a health and safety representative to represent a work group for the purposes of this Act.

(2) The constitution of a work group will be determined by agreement between the employer and—

(a) any interested employees;

or

(b) a person appointed by such employees.

(3) Where an employer is requested by an employee to act to constitute a work group for the purposes of this section, the employer must respond to the request within 14 days of its receipt.

(4) If an employee is a member of a registered association, that registered association must, at the request of the employee, be consulted in relation to any proposal relating to the formation of a work group that could affect the employee.

(5) A work group must be constituted in a manner that takes into account—

(a) the need for a health and safety representative representing that group to be able to perform his or her functions effectively;

and

- (b) the need for the employer to be able to fulfil his or her responsibilities to a health and safety representative representing that group effectively.

(6) In so far as may be relevant to a particular case, and subject to any guidelines issued by the Commission, the following matters should be considered in relation to the constitution of a work group:

- (a) the number of employees employed by the employer;
- (b) the nature of each type of work performed by the employer's employees;
- (c) the number and grouping of employees who perform the same or similar types of work;
- (d) the areas or places where each type of work is performed;
- (e) the extent to which any employee must move from place to place while at work;
- (f) the times at which particular work is performed;
- (g) the overtime or shift-work arrangements that apply in relation to the performance of work;
- (h) the nature of particular risks involved in each type of work;
- (i) any other relevant factor.

(7) Where—

- (a) an employer fails to respond to a request in accordance with subsection (3);
or
- (b) a dispute arises in relation to the constitution of a work group under this section,

an employee, the employer or, if any employee is a member of a registered association, that registered association if so requested by such an employee, may refer the matter to the Industrial Commission.

(8) Where a matter is referred to the Industrial Commission under subsection (7), the Industrial Commission must attempt to resolve the matter by conciliation.

(9) If a matter cannot be resolved within a reasonable time by conciliation under subsection (8), the Industrial Commission must refer the matter to the President of the Industrial Court for determination by a review committee.

(10) The review committee may determine how a particular work group or groups are to be constituted and the decision of the review committee is binding on all parties.

(11) The constitution of a work group may be varied at any time—

- (a) by agreement between the employer and—
 - (i) any interested employees;
 - or
 - (ii) a person appointed by such employees;

or

- (b) in default of agreement, by a review committee.

(12) The employer must keep a list of the work groups constituted under this section.

(13) A copy of the list must be displayed by the employer in a prominent place at his or her principal place of business, or at any other place that is appropriate taking into account the constitution of the various work groups.

Election of health and safety representatives**11. Section 28 of the principal Act is amended—**

(a) by striking out from subsection (2) “member of the designated work group” and substituting “recognized member of the work group”;

(b) by striking out subsection (3) and substituting the following subsection:

(3) The conduct of an election of a health and safety representative will be carried out by a person selected by agreement between at least one-half of the recognized members of the work group or, failing the selection of such a person within a reasonable time, on application to the Commission, by a person nominated by the Commission.;

(c) by striking out from subsection (4) “Every member of a designated work group” and substituting “Every recognized member of the work group”;

(d) by striking out from subsection (6) “if any member of the designated work group” and substituting “if any recognized member of the work group”;

(e) by striking out subsection (8) and substituting the following subsection:

(8) If a dispute arises in relation to the election of a health and safety representative under this section—

(a) a person who is a recognized member of the work group;

or

(b) if any such person is a member of a registered association and requests the registered association to act on his or her behalf—that registered association,

may refer the dispute to the Industrial Commission.;

and

(f) by striking out from subsection (9) “the Commission” and substituting “the Industrial Commission”.

Election of a deputy health and safety representative**12. Section 29 of the principal Act is amended by striking out subsection (1) and substituting the following subsection:**

(1) The recognized members of a work group may elect one of their number to be a deputy to the health and safety representative for that group.

Term of office of a health and safety representative**13. Section 30 of the principal Act is amended—**

(a) by striking out from subsection (1) “2” and substituting “three”;

(b) by striking out from subsection (2) “designated”;

(c) by inserting after paragraph (c) of subsection (2) the following paragraph:

(ca) is removed from office by a resolution of at least two-thirds of the recognized members of the group on the ground that they consider that the person has ceased to be a suitable person to act as their representative;;

(d) by striking out subsection (3) and substituting the following subsection:

(3) Where there is a substantial change in the circumstances surrounding the constitution of a work group and it is agreed at that time by at least one-

half of the recognized members of the group that a fresh election should be held to elect a health and safety representative, the health and safety representative who was representing that group must resign and a fresh election must be held.;

- (e) by striking out from paragraph (b) of subsection (4) "member of the designated work group" and substituting "recognized member of the work group";

and

- (f) by striking out paragraph (c) of subsection (4) and substituting the following paragraph:

(c) a majority of the employees who at any particular time are the members of the work group that the health and safety representative represents.

Health and safety committees

14. Section 31 of the principal Act is amended—

- (a) by striking out subsection (1) and substituting the following subsection:

(1) At the request of—

(a) a health and safety representative;

(b) a prescribed number of employees;

or

(c) a majority of the employees at any workplace,

the employer must, within two months of the request, establish one or more health and safety committees.;

- (b) by striking out subsection (4) and substituting the following subsection:

(4) The membership of a committee should, so far as is reasonably practicable, represent a reasonable cross-section of the persons whose activities, work, or health, safety or welfare (whether as principal, manager, supervisor or employee) could be within the responsibilities of the committee subject however to the following qualifications:

(a) any relevant health and safety representative should be encouraged to be a member of the committee;

and

(b) at least half of the members of the committee must be employees.;

- (c) by striking out from subsection (6) "the Commission" and substituting "the Industrial Commission";

and

- (d) by striking out from subsection (12) "and a majority of the members of the committee who are employees" and substituting ", any relevant health and safety representative, and any interested employees who are within the responsibility of the committee".

Functions of health and safety representatives

15. Section 32 of the principal Act is amended—

- (a) by striking out from subsection (1) "designated";

- (b) by striking out from paragraph (a) of subsection (1) "the workplace" and substituting "any relevant workplace";

- (c) by striking out from paragraph (b) of subsection (1) "the workplace" and substituting "any relevant workplace";
 - (d) by striking out from paragraph (c) of subsection (1) "designated";
 - (e) by striking out from paragraph (f) of subsection (1) "the workplace" and substituting "any relevant workplace";
 - (f) by striking out from subparagraph (ii) of paragraph (a) of subsection (3) "designated";
 - (g) by striking out from paragraph (b) of subsection (3) "the workplace" and substituting "any workplace";
- and
- (h) by striking out from subsection (5) "designated".

Functions of health and safety committees

16. Section 33 of the principal Act is amended—

- (a) by striking out from paragraph (b) of subsection (1) "the workplace" and substituting "any relevant workplace";
- and
- (b) by striking out from paragraph (c) of subsection (1) "the workplace" and substituting "any relevant workplace".

Responsibilities of employers

17. Section 34 of the principal Act is amended—

- (a) by striking out subsection (1) and substituting the following subsection:

(1) An employer must—

- (a) consult any relevant health and safety representatives and health and safety committees on any proposed changes to any workplace, the plant used at any workplace, the substances used, handled, processed or stored at any workplace, the work to be conducted at any workplace or the procedures for carrying out work at any workplace, where those changes might affect the health, safety or welfare of employees at the workplace;
- (b) consult any relevant health and safety representatives and health and safety committees on the occupational health, safety and welfare practices, procedures and policies that are to be followed at any workplace;
- (c) consult any relevant health and safety representatives and health and safety committees on any proposed changes to occupational health, safety and welfare practices, procedures or policies;
- (d) consult any relevant health and safety representatives on any proposed application to the Chief Inspector for the modification of the requirements of any regulation;
- (e) at the request of the employee, permit a health and safety representative to be present at any interview concerning occupational health, safety or welfare between the employer (or a representative of the employer) and an employee who is a member of the work group that the health and safety representative represents;
- (f) permit any relevant health and safety representative to accompany an inspector during an inspection of any workplace;

- (g) permit a health and safety representative to have access to such information as the employer possesses or can reasonably obtain—
- (i) relating to risks that arise or may arise at any workplace where employees who are members of the work group that the health and safety representative represents work, out of work conducted at any workplace or out of plant or substances used at any workplace;
- or
- (ii) concerning the health and safety of the employees of the employer (but personal information regarding the health of an employee shall not be divulged under this subparagraph without the consent of the employee),
- and, when requested to do so, supply a copy of that information to the health and safety representative;
- (h) immediately notify a health and safety representative of the occurrence of an accident, dangerous occurrence, imminent danger or risk or hazardous situation that affects or may affect any employee who is a member of the work group that the health and safety representative represents;
- (i) notify a health and safety representative of the occurrence of any work-related injury to an employee who is a member of the work group that the health and safety representative represents;
- and
- (j) provide such other facilities and assistance to health and safety representatives as are necessary or prescribed to enable them to perform their functions under this Act;
- (b) by striking out from subsection (3) “pay” and substituting “income”;
- and
- (c) by striking out paragraph (a) of subsection (4) and substituting the following paragraph:
- (a) where—
- (i) the employer employs 10 or less employees;
- and
- (ii) the employer is not an employer in respect of whom a supplementary levy has been imposed by the Workers Rehabilitation and Compensation Corporation under Part V of the *Workers Rehabilitation and Compensation Act, 1986*,
- the health and safety representative may only take such time off work to take part in a course of training as the employer reasonably allows;.

Default notices

18. Section 35 of the principal Act is amended—

- (a) by striking out from subsection (2) “the part of the workplace to which the matter relates” and substituting “the matter”;
- (b) by striking out from subsection (3) “issued” and substituting “addressed”;
- (c) by striking out from paragraph (a) of subsection (5) “the person to whom the notice is addressed” and substituting “a person”;

- (d) by striking out from subsection (8) “issued” and substituting “addressed”;
- (e) by striking out from paragraph (a) of subsection (9) “issued” and substituting “addressed”;

and

- (f) by striking out subsection (12) and substituting the following subsection:

(12) Where a default notice is issued, the person to whom notice is addressed must, on receipt of the notice (or a copy of the notice)—

(a) bring the notice to the attention of any person whose work is affected by the notice;

(b) display the notice or a copy of the notice in a prominent place at or near any workplace that is affected by the notice;

and

(c) keep a copy of the notice for such period as may be prescribed.

Action where the health or safety of a worker is threatened

19. Section 36 of the principal Act is amended—

(a) by striking out from subsection (1) “in the designated work group” and substituting “who is a member of the work group”;

(b) by striking out from subsection (2) “that part of the workplace to which the matter relates” and substituting “the matter”;

and

(c) by striking out from paragraph (a) of subsection (4) “that part of the workplace to which the matter relates” and substituting “the matter”.

Attendance by inspector

20. Section 37 of the principal Act is amended by striking out from subsection (4) “issued” and substituting “addressed”.

Powers of entry and inspection

21. Section 38 of the principal Act is amended—

- (a) by inserting after subsection (1) the following subsection:

(1a) Subsection (1) (a) is subject to the qualification that a person cannot enter a workplace where a self-employed person works alone unless he or she has a reasonable belief that there is a risk to the health or safety of a person other than the self-employed person.;

and

- (b) by striking out from subparagraph (i) of paragraph (c) of subsection (10) “designated”.

Improvement notices

22. Section 39 of the principal Act is amended—

(a) by inserting “to whom the notice is addressed” after “the person” in subsection (1);

and

(b) by striking out from paragraph (a) of subsection (2) “the person to whom the notice is addressed” and substituting “a person”.

Notices to be displayed

23. Section 41 of the principal Act is amended by striking out subsection (2) and substituting the following subsection:

(2) Where an improvement notice or a prohibition notice is issued, the person to whom the notice is addressed must, on receipt of the notice (or a copy of the notice)—

(a) supply a copy of the notice to any health and safety representative who represents any employees whose work is affected by the notice;

(b) bring the notice to the attention of any person whose work is affected by the notice;

and

(c) display the notice or a copy of the notice in a prominent place at or near any workplace that is affected by the notice.

Review of notices

24. Section 42 of the principal Act is amended—

(a) by striking out paragraphs (b) and (c) of subsection (1) and substituting the following paragraphs:

(b) a person in relation to whose work an improvement notice or a prohibition notice applies;

or

(c) a health and safety representative who represents any employee whose work is affected by an improvement notice or a prohibition notice;

and

(b) by striking out from subsection (5) “the employees to whom the prohibition notice relates” and substituting “any person at work”.

Powers of committee on review

25. Section 43 of the principal Act is amended by striking out from subsection (2) “issued” and substituting “addressed”.

Insertion of s. 60a

26. The following section is inserted after section 60 of the principal Act:

Expiation of offences

60a. Where it is alleged that a person has committed an offence against this Act that—

(a) carries a maximum penalty not exceeding a Division 5 fine;

and

(b) is prescribed by the regulations for the purposes of this section,

an inspector may cause to be served personally or by post on that person a notice in a form determined by the Director to the effect that the offence may be expiated by payment of the prescribed expiation fee specified in the notice within 28 days of the date of the notice and, if the offence is so expiated, no prosecution of the alleged offence may be commenced.

Substitution of s. 61

27. Section 61 of the principal Act is repealed and the following section is substituted:

Offences by bodies corporate

61. (1) Each body corporate carrying on business in the State must appoint one or more responsible officers for the purposes of this section.

(2) A person appointed as a responsible officer under this section must be—

(a) a member of the governing body of the body corporate who resides in the State;

(b) the chief executive officer of the body corporate, if he or she resides in the State;

(c) if no one is eligible for appointment under a preceding paragraph—a senior executive officer of the body corporate who resides in the State;

or

(d) if no one is eligible for appointment under a preceding paragraph—an officer of the body corporate.

(3) A responsible officer must take reasonable steps to ensure compliance by the body corporate of its obligations under this Act.

Penalty—

(a) in a case where paragraph (b) does not apply—division 6 fine;

(b) where the court is satisfied that the offence has contributed to the commission of an offence by the body corporate—a fine not exceeding the fine that is prescribed for the offence committed by the body corporate.

(4) If a body corporate fails to appoint one or more responsible officers under this section, each officer of the body corporate will be taken to be a responsible officer for the purposes of subsection (3).

(5) This section does not derogate from any other rule of law relating to the duties of officers of bodies corporate.

Insertion of s. 63a

28. The following section is inserted after section 63 of the principal Act:

Use of codes of practice in proceedings

63a. Where in proceedings for an offence against this Act it is proved that the defendant failed to observe a provision of an approved code of practice dealing with the matter in respect of which the offence is alleged to have been committed, the defendant is, in the absence of proof to the contrary, to be taken to have failed to exercise the standard of care required by that section.

Evidentiary provision

29. Section 64 of the principal Act is amended by inserting after subsection (2) the following subsection:

(3) In any legal proceedings, evidence of the contents of an approval code of practice, or of a document adopted or applied by, or referred to in, an approved code of practice or a regulation, may be given by production of a document purporting to be certified by or on behalf of the Minister as a true copy of the approved code of practice or other document.

Modifications of regulations

30. Section 66 of the principal Act is amended by inserting “vary or” after “absolute discretion to” in subsection (4).

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. B. DUNSTAN, Governor