



WORKPLACE HEALTH AND SAFETY ACT 1995

No. 13 of 1995

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WORKPLACE HEALTH AND SAFETY ACT 1995

No. 13 of 1995

AN ACT to provide for the health and safety of persons employed in, engaged in or affected by industry, to provide for the safety of persons using amusement structures and temporary public stands and to repeal certain enactments

[Royal Assent 24 July 1995]

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

PART 1

PRELIMINARY

Short title

1—This Act may be cited as the *Workplace Health and Safety Act 1995*.

Commencement

2—This Act commences on a day or days to be proclaimed.

Interpretation

3—(1) In this Act, unless the contrary intention appears—

“**amusement structure**” means equipment operated for hire or reward which provides entertainment or amusement through movement of the equipment or part of the equipment or when passengers travel on, around or along the equipment;

“**appeal tribunal**” means the Workplace Health and Safety Appeal Tribunal established under section 45;

“**approved code of practice**” means a code of practice approved by the Minister under section 22;

“**Board**” means the Workplace Safety Board of Tasmania established under the *Workers Rehabilitation and Compensation Act 1988*;

“**Chief Executive**” means the Head of the Agency, within the meaning of the *Tasmanian State Service Act 1984*, in which this Act is administered;

“**contract of service**” means—

- (a) a contract under which a natural person is employed by another person; and
- (b) a contract of apprenticeship; and
- (c) a contract or agreement under which a natural person receives training in an occupation, a trade or a vocation from an employer;

“**contractor**” means a person engaged by any person (otherwise than as an employee) to perform work for gain or reward;

“**dangerous incident**” means—

- (a) damage to any boiler or other pressure vessel, or damage to a load bearing member of any lifting machinery, scaffolding or amusement structure, being damage which endangers the health or safety of any person in the vicinity; or
- (b) an uncontrolled explosion, fire or discharge of electricity, gas or steam; or

- (c) an occurrence, including those involving any dangerous substance, involving imminent risk of explosion, fire, death, serious bodily injury or illness to any person or serious damage to any property;
- “designated workplace”** means a workplace declared to be a designated workplace under subsection (1) of section 23 or a workplace of a class of workplace declared to be a designated class of workplace under that subsection;
- “Director”** means the person appointed and holding office as Director of Industry Safety under section 33;
- “duties”** includes functions;
- “employee”** means a natural person who is employed under a contract of service and, in relation to any educational or other training establishment, includes any natural person who, as a student, uses hazardous substances or plant in that establishment;
- “employees’ safety representative”** means an employees’ safety representative elected under section 32;
- “employer”** means a person by whom an employee is employed under a contract of service;
- “financial year”** means the period of 12 months ending on the last day of June;
- “health and safety committee”** means a health and safety committee established under Part 5;
- “industry”** means any industry, trade, business, undertaking, profession, calling, function, process or work in which persons are employed or engaged and includes the use of plant in an educational establishment;
- “inspector”** means a person appointed as, or authorised to perform the functions and exercise the powers of, an inspector under section 34 and includes the Chief Executive and the Director;
- “install”**, in relation to plant, includes repair or replace;
- “mine”** means any mining tenement, within the meaning of the *Mining Act 1929*, and any other place at, in, on or under which mining operations, within the meaning of that Act, are carried on;

- “**plant**” includes any machinery, equipment, scaffolding, amusement structure, appliance, implement or tool and any component or fitting of any of those things;
- “**principal**” means a person who engages any person (otherwise than as an employee) to perform work for gain or reward;
- “**responsible officer**” means a person appointed as a responsible officer under section 10;
- “**self-employed person**” means a natural person who works for gain or reward otherwise than as an employee;
- “**serious bodily injury or illness**” means an injury or illness that disables a person to the extent that as a consequence of that injury or illness the person is subject to a period of admission to hospital as an in-patient;
- “**substance**” means any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour;
- “**supply**”, in relation to any plant or substance, means supply the plant or substance by way of sale, lease or hire, whether as principal or agent;
- “**temporary public stand**” means a stand that is temporarily set up to support members of the public attending any gathering and includes the supporting structure and access structure;
- “**workplace**” means any premises or place (including any mine, aircraft, vessel or vehicle) where an employee, contractor or self-employed person is employed or engaged in industry.

(2) Where a person, in connection with a business carried on by an employer, performs work for an employer gratuitously, the person is taken to be employed by the employer.

Act binds Crown

4—This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.

PART 2**FUNCTIONS AND POWERS OF CHIEF EXECUTIVE AND
WORKPLACE SAFETY BOARD OF TASMANIA****Chief Executive**

5—(1) In addition to any functions imposed on the Chief Executive under this or any other Act, the Chief Executive has the following functions:—

- (a) to ensure so far as is practicable that the duties and obligations imposed on any person by or under this Act are complied with;
- (b) to formulate and implement policies and strategies relating to health and safety in industry;
- (c) to advise the Minister on the operation and administration of this Act and on the making of regulations, and the approval of codes of practice, under this Act;
- (d) to consult with the Board in respect of the formulation and implementation of policies relating to health and safety in industry and on the making of regulations, and the approval of codes of practice, under this Act;
- (e) to collect, interpret and report information relating to health and safety in industry.

(2) The Chief Executive may do all things necessary or convenient to be done for or in connection with, or incidental to, the performance of the Chief Executive's functions under this Act.

Workplace Safety Board of Tasmania

6—In addition to any functions imposed on it under any other Act, the Board has the following functions:—

- (a) to promote the prevention of injuries and disease at workplaces and the development of healthy and safe workplaces;
- (b) to inquire into and report to the Minister on any matter relating to this Act referred to it by the Minister;

- (c) to make recommendations to the Chief Executive on any matter relating to this Act referred to it by the Chief Executive;
- (d) to make recommendations to the Minister or the Chief Executive with respect to such matters as it considers necessary for the purposes of this Act.

Advisory Committees

7—The Board may establish advisory committees, which may include persons who are not members of the Board, for the purpose of advising it on any matter arising in relation to the performance of its functions under this Act.

Confidentiality

8—Except in the course of performing or exercising functions or powers under this Act, a member of the Board or an advisory committee established by the Board must not disclose any information obtained by that person in the performance or exercise of any functions or powers under this Act.

Penalty: Fine not exceeding 50 penalty units.

PART 3

DUTIES AND OBLIGATIONS RELATING TO WORKPLACE HEALTH AND SAFETY

Duties of employers

9—(1) An employer must, in respect of each employee employed by the employer, ensure so far as is reasonably practicable that the employee is, while at work, safe from injury and risks to health and, in particular, must—

- (a) provide and maintain so far as is reasonably practicable—
 - (i) a safe working environment; and
 - (ii) safe systems of work; and

- (iii) plant and substances in a safe condition; and
- (b) provide facilities of a prescribed kind for the welfare of employees at any workplace that is under the control or management of the employer; and
- (c) provide any information, instruction, training and supervision reasonably necessary to ensure that each employee is safe from injury and risks to health.

Penalty: In the case of—

- (a) a body corporate, a fine not exceeding 1 500 penalty units; or
- (b) a natural person, a fine not exceeding 500 penalty units.

(2) Without limiting subsection (1), an employer must so far as is reasonably practicable—

- (a) if hazards exist and have been identified to the employer, in writing, by the Director, monitor the health of employees in their employment with the employer to ensure the prevention of work-related injuries and illnesses; and
- (b) keep records relating to work-related injuries and illnesses suffered by employees in their employment with the employer and retain those records for such period as is prescribed; and
- (c) provide information to the employer's employees, in such languages as are appropriate, in relation to health, safety and welfare in the workplace (including the names of persons to whom the employees may make inquiries and complaints about matters affecting occupational health, safety or welfare); and
- (d) ensure that any employee of the employer who is to undertake work of a hazardous nature, which, to the employer's knowledge, the employee has not previously performed, receives proper information, instruction and training before the employee commences that work; and
- (e) ensure that any employee of the employer who is inexperienced in the performance of any work of a hazardous nature receives such supervision as is reasonably necessary to ensure the employee's health and safety; and

- (f) ensure that any employee of the employer 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 the employee's health and safety; and
- (g) ensure that any responsible officer, manager or supervisor appointed by the employer is provided with any information, instruction and training reasonably necessary to ensure that each employee under his or her management or supervision is, while at work, safe from injury and risks to health; and
- (h) monitor working conditions at any workplace that is under the control or management 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 control or management of the employer, either wholly or substantially, is maintained in a safe and healthy condition.

Penalty: In the case of—

- (a) a body corporate, a fine not exceeding 1 500 penalty units; or
- (b) a natural person, a fine not exceeding 500 penalty units.

(3) An employer must ensure so far as is reasonably practicable that the health and safety of any person, other than an employee of the employer or a contractor or any person employed or engaged by a contractor, is not adversely affected as a result of the work carried on at a workplace.

Penalty: In the case of—

- (a) a body corporate, a fine not exceeding 1 500 penalty units; or
- (b) a natural person, a fine not exceeding 500 penalty units.

(4) At any workplace under the control or management of an employer who is a principal, that employer must ensure so far as is reasonably practicable that a contractor engaged to perform work for the employer in the course of the employer's business, and any person employed or engaged by the contractor to carry on or assist in carrying on that work, is safe from injury and risks to health and, in particular, must so far as is reasonably practicable—

- (a) provide and maintain a safe working environment; and
- (b) ensure that any contractor or person employed or engaged by the contractor is aware of the health and safety requirements of the workplace and that the contractor and any person employed or engaged by the contractor comply with those requirements.

Penalty: In the case of—

- (a) a body corporate, a fine not exceeding 1 500 penalty units; or
- (b) a natural person, a fine not exceeding 500 penalty units.

(5) An employer must not allow a contractor engaged by the employer or any person employed or engaged by that contractor to carry on work for the employer at the employer's workplace in a manner which the employer reasonably believes would place at risk the health or safety of any person.

Penalty: In the case of—

- (a) a body corporate, a fine not exceeding 1 500 penalty units; or
- (b) a natural person, a fine not exceeding 500 penalty units.

(6) At any workplace under the control or management of a person who is a principal but is not an employer, that person must comply with subsections (4) and (5) as if that person were an employer.

(7) Nothing in subsection (4) or (5) limits the duties of a contractor, specified in subsections (1), (2), (3) and (8), to any persons employed or engaged by the contractor or affected by the work which the contractor or any person employed or engaged by the contractor is carrying on.

(8) An employer or a principal who is not an employer must so far as is reasonably practicable—

- (a) ensure that visitors to a workplace which is under the employer's or principal's control or management are aware of the health and safety requirements relevant to such visitors and that they comply with those requirements; and
- (b) remove a visitor who fails to comply with any health and safety requirements relevant to visitors to the workplace.

Penalty: In the case of—

- (a) a body corporate, a fine not exceeding 100 penalty units; or
- (b) a natural person, a fine not exceeding 20 penalty units.

Responsible officer

10—(1) An employer is to appoint a responsible officer for each workplace at which the employer carries on business.

(2) If an employer fails to appoint a responsible officer for a workplace, the person responsible for the direction and management of the business of the employer at that workplace is taken to have been appointed as the responsible officer for that workplace.

(3) An employer is to ensure that a responsible officer appointed under subsection (1) has sufficient authority to perform the duties of a responsible officer under this Act.

Duties of responsible officer

11—(1) A responsible officer must perform the duties of his or her employer under this Act at the workplace for which he or she is the responsible officer.

Penalty: Fine not exceeding 250 penalty units.

(2) A responsible officer is not to be taken to have failed to perform any duty of his or her employer under this Act if—

- (a) it was not reasonably practicable for the responsible officer to perform that duty; or

- (b) the failure to perform the duty was due to causes over which the responsible officer had no control and against the happening of which it was not reasonably practicable for the responsible officer to make provision; or
- (c) the responsible officer used all due diligence to prevent the failure to perform the duty; or
- (d) the responsible officer was unaware that he or she had been appointed, or was taken to have been appointed, as the responsible officer.

(3) Nothing in subsection (1) relieves the employer of performing the employer's duties under this Act.

(4) A responsible officer may be proceeded against and convicted of having failed to perform the duties of an employer under this Act whether or not the employer has been proceeded against or has been convicted of having failed to perform the duty.

Obstruction of responsible officer

12—A person having authority or control over the responsible officer at a workplace must not exercise that authority or control in any way to obstruct the responsible officer in the exercise of his or her responsibilities under this Act.

Penalty: In the case of—

- (a) a body corporate, a fine not exceeding 500 penalty units; and
- (b) a natural person, a fine not exceeding 200 penalty units.

Duties of self-employed persons

13—Every self-employed person must ensure so far as is reasonably practicable that persons, not in the self-employed person's employment, are not exposed to risks to their health and safety arising from work carried on at the self-employed person's workplace.

Penalty: In the case of—

- (a) a body corporate, a fine not exceeding 1 500 penalty units; and
- (b) a natural person, a fine not exceeding 500 penalty units.

Duties of designers, manufacturers, importers, suppliers and installers

14—(1) A person who designs, manufactures, imports or supplies any plant for use at a workplace must so far as is reasonably practicable—

- (a) ensure that the design and construction of the plant is such that persons who use the plant properly are not, in doing so, exposed to risks to their health and safety; and
- (b) when the plant is supplied, ensure that adequate information is supplied in respect of—
 - (i) any dangers associated with the plant; and
 - (ii) the conditions necessary to ensure that persons using the plant properly are not, in doing so, exposed to risks to their health and safety.

Penalty: In the case of—

- (a) a body corporate, a fine not exceeding 1 500 penalty units; and
- (b) a natural person, a fine not exceeding 500 penalty units.

(2) A person who manufactures, imports or supplies any substance for use at a workplace must ensure so far as is reasonably practicable that adequate toxicological data, and information concerning potential risks to health and safety, in respect of the substance as is relevant to the safe use, handling, processing, storage, transportation and disposal of the substance, is provided with the substance when the substance is supplied.

Penalty: In the case of—

- (a) a body corporate, a fine not exceeding 1 500 penalty units; and
- (b) a natural person, a fine not exceeding 500 penalty units.

(3) A person who installs any plant for use at a workplace or installs a temporary public stand must ensure so far as is reasonably practicable that it is installed so that persons who use the plant or temporary public stand properly are not subjected to any risks to their health or safety that arise from, or are increased by, the way in which the plant or temporary public stand is installed.

Penalty: In the case of—

- (a) a body corporate, a fine not exceeding 1 500 penalty units; and
- (b) a natural person, a fine not exceeding 500 penalty units.

Persons in control of workplaces, &c.

15—(1) A person who has control of any premises, plant, substance or temporary public stand to which subsection (2) applies must ensure so far as is reasonably practicable that the premises and the means of access to or egress from the premises, or the plant, substance or temporary public stand are safe and without risk to health and safety.

Penalty: In the case of—

- (a) a body corporate, a fine not exceeding 1 500 penalty units; and
- (b) a natural person, a fine not exceeding 500 penalty units.

(2) This subsection applies to—

- (a) premises which have been made available to persons, other than employees of the person in control of the premises, as a workplace or the means of access to or egress from those premises; and
- (b) any plant, substance or temporary public stand which has been provided for the use or operation of persons at a workplace, other than employees of the person in control of that plant, substance or temporary public stand.

Duties of employees

16—While at work, an employee must—

- (a) take reasonable care for the employee's own health and safety and for the health and safety of other persons, including persons working under the direction or supervision of the employee, who may be affected by the employee's acts or omissions at the workplace; and
- (b) comply with any direction given to the employee by an employer or responsible officer with respect to any matter relating to health and safety under this Act.

Penalty: Fine not exceeding 100 penalty units.

Refusal to work

17—(1) Where an employee has reasonable grounds to believe that, as a result of work being carried on at a workplace, there is a risk of imminent and serious injury to, or imminent and serious harm to the health of, any person, an employee may refuse to work if it is not within the employee's ability to rectify the cause of the risk.

(2) An employee who refuses to work as mentioned in subsection (1) must immediately notify his or her employer or the person in charge of his or her workplace and, if there is an employees' safety representative for the workplace concerned, the employees' safety representative of the risk of imminent and serious injury or imminent and serious harm to health.

Penalty: Fine not exceeding 20 penalty units.

(3) An employee who refuses to work as mentioned in subsection (1) may be given reasonable alternative work to perform until the cause of the risk has been rectified and the employee resumes his or her usual work.

(4) If an employee is given reasonable alternative work to perform, the employee is required to perform that work under the terms and conditions of the employee's employment.

Discrimination against employees

18—An employer must not dismiss an employee, or act in any way detrimental to any employee in the employee's employment with the employer, by reason of the fact that the employee—

- (a) assists or has assisted or gives or has given information to an inspector; or
- (b) appears as a witness in any proceedings under this Act against the employer; or
- (c) makes or has made a reasonable complaint in relation to health and safety to the employer or an inspector; or
- (d) performs or has performed any function or duty as an employees' safety representative or as a member of a health and safety committee; or
- (e) refuses to work under section 17.

Penalty: In the case of—

- (a) a body corporate, a fine not exceeding 250 penalty units; and
- (b) a natural person, a fine not exceeding 100 penalty units.

Consumption of alcohol and drugs

19—A person must ensure that he or she is not, by the consumption of alcohol or a drug, in such a state as to endanger his or her own safety at a workplace or the safety of any other person at a workplace.

Penalty: Fine not exceeding 50 penalty units.

Interference, misuse, &c.

20—A person must not intentionally, recklessly or without reasonable excuse—

- (a) interfere with, misuse or damage anything provided in the interests of health, safety or welfare pursuant to this Act; or
- (b) place at risk the health or safety of any other person while that other person is at a workplace; or

(c) by an act or omission at a workplace, put at risk the health or safety of any other person.

Penalty: In the case of—

- (a) a body corporate, a fine not exceeding 500 penalty units; and
- (b) a natural person, a fine not exceeding 250 penalty units.

Duties to be satisfied by each person

21—If more than one person is under a duty or obligation imposed by this Part, each person must satisfy the duty or obligation imposed on the person without regard to the fact that another person may also be responsible for satisfying that duty or obligation.

Codes of practice

22—(1) For the purpose of providing practical guidance to employees, employers and any other persons on whom a duty of care is imposed under this Act, the Minister may approve a code of practice.

(2) A code of practice may consist of any code, standard, rule, specification or provision relating to workplace health and safety formulated, prepared or adopted by the Director and may apply, incorporate or refer to any document formulated or published by any body or authority as in force at the time the code of practice is approved or as amended, formulated or published from time to time.

(3) The Minister may approve any revision of the whole or part of a code of practice or revoke a code of practice.

(4) Before approving a code of practice or the revision of the whole or part of a code of practice or before revoking a code of practice, the Minister must—

- (a) consult with the Tasmanian Trades and Labor Council and with such employer organisations as the Minister considers appropriate having regard to the application of the code of practice; and

(b) by notice published in the *Gazette* and in 3 daily newspapers published and circulating in the State, give 30 days' notice of the Minister's intention to approve the code of practice or the revision or revocation of the code of practice.

(5) The Minister must give notice in the *Gazette* and in 3 daily newspapers published and circulating in the State of—

(a) the approval of a code of practice; or

(b) the approval of the revision of the whole or part of a code of practice; or

(c) the revocation of a code of practice.

(6) A notice under subsection (5) is not a statutory rule within the meaning of the *Rules Publication Act 1953*.

(7) The Minister must cause to be made available in the Department for inspection by members of the public without charge during normal office hours a copy of—

(a) every approved code of practice; and

(b) if an approved code of practice has been revised and the revision has been approved, the approved code of practice as so revised; and

(c) if an approved code of practice applies, incorporates or refers to any other document, that other document.

(8) An approved code of practice and any approved version of a code of practice have effect on the day on which notice of the approval is published in the *Gazette*.

(9) An approved code of practice ceases to have effect on the day on which notice of the revocation of the code is published in the *Gazette*.

(10) A person is not liable to any civil or criminal proceedings merely because the person has failed to observe any provision of a code of practice approved under this section.

PART 4**DESIGNATED WORKPLACES****Designated workplaces**

23—(1) If the Director is satisfied that the work carried on or proposed to be carried on at a workplace or a class of workplace is, or is likely to be, hazardous for employees at that workplace or class of workplace or other persons involved in the work, the Director may declare that workplace or class of workplace to be a designated workplace or designated class of workplace.

(2) The Director may revoke a declaration made under subsection (1).

(3) The Director must cause a declaration or the revocation of a declaration under this section to be published in the *Gazette* and in 3 daily newspapers published and circulating in the State.

(4) Before work begins at a designated workplace, the employer at that workplace must notify the Director, in a form approved by the Director, of the employer's name and address and location of the workplace.

Penalty: Fine not exceeding 25 penalty units.

(5) A declaration or revocation of a declaration under this section is not a statutory rule within the meaning of the *Rules Publication Act 1953*.

Appointment of responsible officer at designated workplaces

24—(1) An employer carrying on work at a designated workplace must notify the Director, in a form approved by the Director, of the name of the person appointed as the responsible officer under section 10.

Penalty: Fine not exceeding 25 penalty units.

- (2) The responsible officer at a designated workplace is to—
- (a) hold such qualifications as are prescribed; or
 - (b) ensure that a competent person employed by the employer who holds those qualifications is appointed to assist the responsible officer to carry out his or her functions under this Act.

Record book

25—(1) A responsible officer at a designated workplace must, if required by the Director, keep a record book, in a form approved by the Director, to record the inspections made by inspectors, together with instructions given by those inspectors, and other information specified in writing by the Director.

Penalty: In the case of—

- (a) a body corporate, a fine not exceeding 25 penalty units; and
- (b) a natural person, a fine not exceeding 10 penalty units.

(2) The responsible officer must ensure that a record book required to be kept in accordance with subsection (1) is made available for inspection by employees, contractors and self-employed persons at the designated workplace.

Penalty: In the case of—

- (a) a body corporate, a fine not exceeding 25 penalty units; and
- (b) a natural person, a fine not exceeding 10 penalty units.

PART 5**HEALTH AND SAFETY COMMITTEES AND EMPLOYEES' SAFETY REPRESENTATIVES****Health and safety committees**

26—Where more than 20 persons are working at a workplace, whether or not they are employed or engaged by an employer who is a principal, the employer who has control or management of that workplace must, if requested by a majority of those persons, establish a health and safety committee for that workplace not later than 2 months after being requested to do so.

Penalty: In the case of—

- (a) a body corporate, a fine not exceeding 200 penalty units; and
- (b) a natural person, a fine not exceeding 100 penalty units.

Composition of health and safety committee

27—(1) A health and safety committee for a workplace is to consist of—

- (a) employees working at the workplace elected by those employees; and
- (b) persons appointed by the employer of the employees.

(2) Subject to this section, the number of employees to be elected or persons to be appointed for the purposes of this section is to be as agreed between the employer and the employees.

(3) Unless agreed otherwise between the employer and a majority of employees at a workplace, not less than half of the members of a health and safety committee are to be employees elected by the employees at the workplace.

(4) Subsection (1) (a) does not preclude an agreement being reached between an employer and his or her employees that the employees may elect an officer of a union who is not an employee of the employer.

(5) Any dispute between an employer and the employees employed at a workplace arising under subsection (2) is to be referred to the Director for determination.

(6) The Director's determination is final and binding on the employer and the employees employed at the workplace.

(7) For the purposes of subsection (4), “**union**” means—

- (a) an organisation within the meaning of the *Industrial Relations Act 1988* of the Commonwealth; or
- (b) an employee organisation registered as an organisation under the *Industrial Relations Act 1984*.

Functions of health and safety committees

28—(1) The functions of a health and safety committee are—

- (a) to facilitate consultation and co-operation between the employer and persons working at the workplace for which the committee is established in initiating, developing and implementing measures designed to ensure the health and safety of the persons at that workplace; and

- (b) to keep itself informed about standards relating to health and safety in workplaces of a comparable nature; and
- (c) to review and make recommendations to the employer on rules and procedures at that workplace relating to the health and safety of the persons working at that workplace; and
- (d) to recommend to the employer the establishment, maintenance and monitoring of programs, measures and procedures at that workplace relating to the health and safety of the persons working at that workplace; and
- (e) to keep, in an accessible place and form, such information as is provided under this Act and by the employer regarding the hazards to persons that arise or may arise at that workplace; and
- (f) to consider and make recommendations to the employer relating to training and education in, and promotion of, health and safety at that workplace; and
- (g) to consider and make recommendations to the employer relating to changes to be made at that workplace following an accident or dangerous incident; and
- (h) to perform such other functions as may be given to the committee, with its consent, by an employer or as may be prescribed.

(2) Except as is provided in this section or section 31, or as may be prescribed, the terms of employment of an employee who is a member of a health and safety committee remain subject to the control of the person by whom the member is employed.

(3) Subject to subsection (4), a person who is a member of a health and safety committee must not disclose information obtained by the committee if the information relates to—

- (a) commercial or trading operations; or
- (b) the physical or mental condition, or the personal circumstances or affairs, of an employee or other person at the workplace for which the committee is established.

Penalty: Fine not exceeding 50 penalty units.

(4) The disclosure of the information referred to in subsection (3) is permitted if it is—

- (a) a disclosure made in the course of the performance of the person's functions as a member of the health and safety committee; or
- (b) a disclosure of statistical information; or
- (c) a disclosure required by law; or
- (d) a disclosure made with the consent of the person to whom the information relates; or
- (e) a disclosure authorised by regulations made under this Act.

Inspection of workplace

29—A person nominated by a health and safety committee may—

- (a) inspect the workplace for which the committee is established at such times as are agreed with the employer; and
- (b) if that workplace or any part of it has not been inspected within the preceding 30 days, at any time on giving reasonable notice to the employer, inspect that workplace or that part of it which has not been inspected.

Meetings

30—(1) Subject to subsection (2), a health and safety committee may determine its own procedures.

(2) A health and safety committee is to meet at intervals not longer than 3 months or at more frequent intervals as approved by the employer.

Duties of employers in relation to health and safety committees

31—If there is a health and safety committee at a workplace, the employer must—

- (a) make available to the committee such information as the employer has, or could reasonably be expected to have, relating to—
 - (i) hazards to persons that arise or may arise at that workplace; and
 - (ii) so far as it is relevant to the hazards referred to in subparagraph (i), the plant and substances used, and the systems of work, at that workplace; and
 - (iii) the health and safety of persons working at that workplace; and
- (b) consult with the committee on changes proposed to be made at that workplace which may reasonably be expected to affect the health or safety of persons working at that workplace; and
- (c) where an accident or dangerous incident occurs at that workplace, ensure that the committee is notified as soon as possible; and
- (d) provide the committee with reasonable facilities and assistance for the purposes of the performance of its functions under this Act; and
- (e) at the request of an inspector, permit a member of the committee to accompany that inspector in the course of the inspector's inspection of that workplace or any part of it; and
- (f) permit members of the committee to carry out their functions under this Act and to participate in relevant courses of training relating to the health and safety of employees.

Penalty: In the case of—

- (a) a body corporate, a fine not exceeding 200 penalty units; and
- (b) a natural person, a fine not exceeding 100 penalty units.

Employees' safety representatives

32—(1) If 10 or more employees are employed at any workplace they may elect from time to time one of their number to be an employees' safety representative for that workplace for the purposes of this Act.

(2) For the purposes of ensuring the health and safety of employees at a workplace, the employer must confer with the employees' safety representative for that workplace whenever reasonably requested to do so by that representative.

Penalty: In the case of—

- (a) a body corporate, a fine not exceeding 200 penalty units; and
- (b) a natural person, a fine not exceeding 100 penalty units.

(3) Except as may be prescribed, the terms of employment of an employee's safety representative for the purposes of this section remain subject to the control of the employer by whom the employee's safety representative is employed.

(4) Subject to subsection (5), a person who is an employees' safety representative must not disclose information obtained in the course of performing the functions of an employees' safety representative if the information relates to—

- (a) commercial or trading operations; or
- (b) the physical or mental condition, or the personal circumstances or affairs, of an employee or other person at the workplace for which the employees' safety representative is elected.

Penalty: Fine not exceeding 50 penalty units.

(5) The disclosure of the information referred to in subsection (4) is permitted if it is—

- (a) a disclosure made in the course of the performance of the person's functions as an employees' safety representative; or
- (b) a disclosure of statistical information; or
- (c) a disclosure required by law; or

- (d) a disclosure made with the consent of the person to whom the information relates; or
 - (e) a disclosure authorised by regulations made under this Act.
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PART 6

ADMINISTRATION

Director of Industry Safety

33—(1) The Minister is to appoint a person appointed or employed under the *Tasmanian State Service Act 1984* to be Director of Industry Safety and that person holds that office in conjunction with a position or office under that Act.

(2) The Director is to perform the functions imposed, and may exercise the powers conferred, on the Director under this Act.

Appointment of inspectors

34—(1) The Chief Executive may appoint as inspectors for the purposes of this Act or such of the purposes as are specified in the certificates of their appointment—

- (a) persons employed in the Department; or
- (b) with the approval of the Head of an Agency, within the meaning of the *Tasmanian State Service Act 1984*, persons employed in that Agency.

(2) The Chief Executive is to issue an inspector appointed under subsection (1) with a certificate of appointment.

(3) The Chief Executive may authorise a person, other than a person referred to in subsection (1), to perform such of the functions and exercise such of the powers of an inspector under this Act as are specified in the certificates of their authorisation.

(4) The Chief Executive is to issue a person authorised under subsection (3) with a certificate of authorisation.

(5) The Chief Executive may require inspectors appointed under this section to hold such qualifications as may be prescribed.

Chief Inspector of Mines

35—(1) The Chief Executive is to designate an inspector appointed under section 34 (1) (a) to be Chief Inspector of Mines.

(2) The Chief Inspector of Mines is, subject to the direction of the Director, responsible for ensuring that the duties and obligations relating to mines, and such other classes of related workplaces as are specified by the Director, imposed by or under this Act are complied with.

Powers and functions of inspectors

36—(1) In addition to any other powers conferred upon an inspector by any other provisions of this Act, an inspector may at any time enter and inspect any place if the inspector has reasonable cause to believe that an industry is, or is intended to be, carried on, or an amusement structure or temporary public stand is located, in or on that place and may—

- (a) make such examination and inquiry and conduct such tests, including the taking of measurements and samples for analysis, as may be necessary to ascertain whether the provisions of this Act are being complied with; and
- (b) for the purposes of ascertaining whether the provisions of this Act are being complied with, require a person who has custody or control of any record, book or document to produce that record, book or document; and
- (c) examine, copy and take extracts from any record, book or document, or require an employer to provide a copy of any record, book or document; and
- (d) take photographs, films or video or audio recordings; and

- (e) require any person to answer any question or to provide any information relating to the health or safety of persons at any workplace or to any other matter to which this Act applies; and
- (f) require an employer to produce a copy of any statement or record that is required to be prepared or kept under this Act.

(2) In addition to the powers specified in subsection (1), an inspector may, if the inspector suspects on reasonable grounds that an offence against this Act has been committed, seize and retain anything that affords evidence of that offence or in relation to which the offence is suspected of having been committed.

(3) An inspector, at the request of the person in charge of a place from which anything is seized under subsection (2), is to provide a receipt for the thing seized.

(4) In the exercise of powers under this section, an inspector may be accompanied by such assistants, authorised by the Director or the Chief Executive, as may be necessary or desirable in the circumstances.

(5) If an interpreter is taken into a place with an inspector—

- (a) any question put or requirement made by the interpreter on behalf of the inspector is taken to have been put or made by the inspector; and
- (b) a reply to a question or requirement made to the interpreter is taken to have been made to the inspector.

(6) The person in charge of a place that is the subject of an inspection under this section and any employer at that place must provide such assistance as may be necessary to facilitate the exercise of the powers conferred by this section.

Penalty: In the case of—

- (a) a body corporate, a fine not exceeding 250 penalty units; and
- (b) a natural person, a fine not exceeding 100 penalty units.

(7) An inspector is not to exercise his or her powers under this section so as to unnecessarily impede or obstruct work being carried on at a workplace.

(8) In this section, “place” includes a building.

Offences in relation to inspector

37—(1) A person must not—

- (a) obstruct, wilfully delay, threaten, intimidate or attempt to intimidate an inspector, a person assisting an inspector or an interpreter in the execution of the inspector's functions under this Act; or
- (b) without lawful excuse, refuse or fail to comply with a requirement made, or to answer a question asked, by an inspector under this Act; or
- (c) furnish an inspector with information requested under this Act knowing that it is false or misleading in a material particular; or
- (d) directly or indirectly, prevent or attempt to prevent any person from appearing before or being questioned by an inspector.

Penalty: In the case of—

- (a) a body corporate, a fine not exceeding 500 penalty units; and
 - (b) a natural person, a fine not exceeding 200 penalty units.
- (2) A person is not required to provide under subsection (1)—
- (a) information that is the subject of legal professional privilege; or
 - (b) information that is relevant to proceedings that have been commenced under this Act.

(3) A person is not excused from answering any question asked, or providing any information required, by an inspector under this Act on the ground that the answer or information may tend to incriminate that person.

(4) In proceedings for an offence against this Act, any answer given, or information provided, to an inspector pursuant to a requirement of an inspector under this Act is not admissible in evidence against the person giving the answer or providing the information—

- (a) if the person claims before giving the answer or providing the information that the answer or information may tend to incriminate the person; or
- (b) unless the person's entitlement to make a claim of the kind referred to in paragraph (a) was drawn to the person's attention before the answer was given or the information was provided.

Power of inspector in respect of safety and health risks

38—(1) If, by reason of circumstances existing at any workplace or in relation to the use or intended use of any amusement structure or temporary public stand, an inspector is of the opinion that the safety or health of persons is endangered, the inspector, by notice in writing served on the employer at that workplace, or other persons on whom a duty is imposed under this Act, may direct that employer or other person to take any steps that the inspector thinks fit and are specified in the notice to remedy or alleviate those circumstances.

(2) If, in the opinion of the inspector, the circumstances arising under subsection (1) are of sufficient urgency as to warrant immediate action to remedy or alleviate them and it is not practicable to serve a notice in writing on an employer, the inspector may give an oral direction to the employer or any other person on whom a duty is imposed under this Act.

(3) If an oral direction is given under subsection (2), the inspector must as soon as practicable after giving that direction serve a notice in writing in the terms of this section on the person to whom the direction was given.

(4) Without limiting subsections (1) and (2), a notice or direction may, if the circumstances referred to in those subsections constitute the carrying on of any activity, direct that activity to cease immediately.

(5) An employer or other person on whom a notice is served or to whom a direction is given must comply with the notice or direction.

Penalty: In the case of—

- (a) a body corporate, a fine not exceeding 500 penalty units and a daily fine not exceeding 50 penalty units for each day that the body corporate fails to comply with the notice; and
- (b) a natural person, a fine not exceeding 200 penalty units and a daily fine not exceeding 20 penalty units for each day that the person fails to comply with the notice.

(6) A notice referred to in subsection (4) is to specify the reasons for requiring the activity to cease.

- (7) Any notice under this section may be revoked—
- (a) by another notice of the inspector; or
 - (b) by a notice of the Director.

(8) If an employer considers that a notice under this section would have the effect of causing the cessation or substantial cessation of the business being carried on by the employer at the workplace, the employer may request the Director to confirm or revoke that notice.

(9) The Director must confirm or revoke the notice within 24 hours of being requested to do so.

(10) Subsection (8) does not apply if an employer has lodged an appeal under section 41 in respect of the notice.

Prevention of accidents and risks to health

39—(1) For the purpose of preventing injuries to, and risks to the health of, employees, contractors, persons engaged by a contractor and any other person, the Director, by notice in writing served on an employer at a workplace, may—

- (a) direct the employer to take such steps as the Director may consider necessary and are specified in the notice; or
- (b) direct that any specified plant, equipment, appliance or substance must not be used in or in connection with the workplace specified in the notice.

(2) Without limiting subsection (1), a notice may require that an employer must so far as is reasonably practicable do all or any, or a combination of all or any, of the following:—

- (a) monitor the health of persons employed or engaged at the workplace;
- (b) keep information and records relating to the health and safety of those persons;
- (c) employ or engage a person who, being suitably qualified in relation to occupational health and safety, is able to provide advice to the employer in relation to the health and safety of those persons;
- (d) monitor at a workplace under the employer's control or management conditions likely to affect the health and safety of any person;
- (e) prepare a written health and safety policy.

(3) An employer on whom the notice is served must comply with the notice.

Penalty: In the case of—

- (a) a body corporate, a fine not exceeding 500 penalty units and a daily fine not exceeding 50 penalty units for each day that the body corporate fails to comply with the notice; and
- (b) a natural person, a fine not exceeding 200 penalty units and a daily fine not exceeding 20 penalty units for each day that the person fails to comply with the notice.

(4) Where an employer is required under this section—

- (a) to monitor the health of persons employed or engaged at the workplace or the conditions at a workplace under the employer's control or management; or
- (b) to keep information and records relating to the health and safety of those persons—

the employer, at the request of the person whose health was monitored, must make the results of that monitoring or the information available to that person or a person authorised in writing by that person to receive or examine the monitoring or information.

Penalty: In the case of—

- (a) a body corporate, a fine not exceeding 100 penalty units; and
- (b) a natural person, a fine not exceeding 50 penalty units.

(5) An employer must so far as is reasonably practicable—

- (a) provide such information (other than information referred to in subsection (4)) as an employee employed by the employer requests relating to health and safety at any workplaces under the employer's control or management; and

- (b) consult with the relevant employees about the development of measures to promote health and safety at any workplaces under the employer's control or management.

Penalty: In the case of—

- (a) a body corporate, a fine not exceeding 100 penalty units; and
(b) a natural person, a fine not exceeding 50 penalty units.

(6) Nothing in subsection (4) is to be taken to require or authorise an employer to make available to the person requesting the results or information any information or record relating to the health of any other person except with the permission in writing of that other person.

Notice to remedy building defects, &c.

40—(1) Subject to subsection (2), if it appears to the Director that a workplace, or a part of a workplace, which is a building is defective by reason of being unsafe or injurious to health, the Director is to serve written notice on the employer at the workplace requiring the employer to remedy the defect.

(2) If a workplace referred to in subsection (1) is not owned by the employer, the Director may, instead of serving notice on the employer under that subsection, serve written notice on the owner of the building or the person receiving the rent in respect of the building.

(3) If a notice is served on the owner or a person under subsection (2), that owner or person is taken to be the employer at the workplace for the purposes of this section.

(4) A notice under this section is to specify—

- (a) the nature of the defect; and
(b) the repairs, alterations or improvements required to be made; and
(c) the time within which those repairs, alterations or improvements are to be completed.

(5) A person on whom the notice is served must comply with the notice.

Penalty: In the case of—

- (a) a body corporate, a fine not exceeding 500 penalty units; and
- (b) a natural person, a fine not exceeding 200 penalty units.

Right of appeal

41—(1) A person on whom a notice under section 38, 39 or 40 is served and who is aggrieved by the notice may, within 14 days from the service of the notice, appeal to the appeal tribunal.

(2) Subject to subsection (3), if an appeal is instituted under this section, the notice in respect of which the appeal is instituted is of no effect pending the final determination or withdrawal of the appeal.

(3) If an appeal is instituted against a notice which directs an activity to cease immediately, the notice takes effect, unless the appeal tribunal directs otherwise, pending the final determination of the appeal.

(4) If the appeal tribunal makes a direction under subsection (3), the direction takes effect from the day on which it is made.

(5) On an appeal under this section, the appeal tribunal, unless it dismisses the appeal, may revoke or vary the notice.

Order to secure compliance with notices

42—(1) This section applies if it appears to the Director—

- (a) that a person on whom an inspector has served a notice under section 38 has contravened this Act by failing to comply with the notice; and
- (b) because of the failure, that there is an imminent risk of serious bodily injury, imminent risk to the health of any person or imminent risk of a dangerous incident.

(2) The Director may make application to the Supreme Court for an order that the person comply with the notice.

(3) If the Court is satisfied that there is an imminent risk of serious bodily injury, imminent risk to the health of any person or imminent risk of a dangerous incident because of the contravention, the Court may make any order it considers appropriate in the circumstances.

Inspector not to divulge information nor to have financial interest

43—(1) An inspector or a person employed in the Department must not divulge any information obtained in the exercise of an inspector's powers or functions under this Act except—

- (a) in the course of official duties; or
- (b) when required to do so by law.

Penalty: Fine not exceeding 50 penalty units.

(2) Subsection (1) does not prevent the Chief Executive and Director from—

- (a) providing a brief factual report of an accident in which a person was injured to that person, that person's legal representative or the employer; or
- (b) making public a brief account of an accident with identifying details omitted and with recommendations for preventing its recurrence in the interests of industrial safety; or
- (c) making public reports of statistics relating to injuries and risks to health at workplaces.

(3) Nothing in the *Freedom of Information Act 1991* authorises the disclosure of any information obtained in the exercise of an inspector's powers or functions under this Act which would disclose a trade secret or place an employer's business at competitive disadvantage.

(4) If an inspector has any direct or indirect financial interest in any premises or place in respect of which the inspector is performing or exercising powers or functions under this Act, the inspector must as soon as is reasonably practicable disclose that interest to the Chief Executive.

Penalty: Fine not exceeding 50 penalty units.

Protection from liability

44—(1) An inspector does not incur any personal liability in respect of any act done or omitted to be done by the inspector in good faith in the performance or exercise, or purported performance or exercise, of any function or power of the inspector under this Act.

(2) Subsection (1) does not preclude the Crown from incurring liability that an inspector would, but for subsection (1), incur.

Appeal tribunal

45—(1) The Workplace Health and Safety Appeal Tribunal is established.

(2) The appeal tribunal is to be constituted by a magistrate appointed by the Governor and notified in the *Gazette*.

(3) The Governor, by notice in the *Gazette*, may appoint a magistrate to act as the deputy of the magistrate appointed under subsection (2).

(4) If the magistrate appointed under subsection (2) is unable for any reason to hear and determine an appeal made to the appeal tribunal under this Act or considers it inappropriate to hear and determine such an appeal, the appeal tribunal is to be constituted by the deputy of that magistrate.

(5) The appeal tribunal has jurisdiction to hear and determine all appeals made to it under this Act and has power to make such orders as to costs of, or incidental to, any proceedings before the appeal tribunal as it thinks fit.

Hearing of appeals

46—(1) Except as provided in this section, an appeal is to be instituted, heard and determined as prescribed.

(2) The decision of the appeal tribunal on the hearing of an appeal is final.

PART 7**MISCELLANEOUS****Notice of serious accidents and dangerous incidents to be given**

47—If at a workplace—

- (a) a person is killed or suffers serious bodily injury or illness; or
- (b) a dangerous incident occurs as a result of which a person could have been killed or could have suffered serious bodily injury or illness—

the employer or the principal of the person concerned or, in the case of a person other than an employee or contractor, the employer having control or management of the workplace must, by the quickest available means, notify an inspector of particulars of the occurrence of the death, injury, illness or incident.

Penalty: In the case of—

- (a) a body corporate, a fine not exceeding 50 penalty units; and
- (b) a natural person, a fine not exceeding 20 penalty units.

Interference with accident sites

48—(1) If a person is killed or suffers serious bodily injury or illness or a dangerous incident occurs as a result of which a person could have been killed or could have suffered serious bodily injury or illness, a person must not move or otherwise interfere with any plant or other thing involved in the death, injury, illness or occurrence without the prior permission of an inspector.

Penalty: In the case of—

- (a) a body corporate, a fine not exceeding 50 penalty units; and
- (b) a natural person, a fine not exceeding 20 penalty units.

(2) Subsection (1) does not apply if the movement or interference is necessary—

- (a) to save life or relieve suffering; or
- (b) to prevent damage to property or injury to persons.

Plant hired for use at workplace

49—A person must not let on hire or offer to let on hire or advertise for letting on hire any plant for use at a workplace unless it complies with the prescribed requirements.

Penalty: In the case of—

- (a) a body corporate, a fine not exceeding 500 penalty units; and
- (b) a natural person, a fine not exceeding 200 penalty units.

Delegation by Chief Executive

50—The Chief Executive may delegate any of the Chief Executive's powers or functions under this Act (except this power of delegation) to a person employed in the Department.

Delegation by Director

51—The Director may delegate any of the Director's powers or functions under this Act (except this power of delegation) to a person employed in the Department.

Annual report

52—(1) The Chief Executive, not later than 30 November after the end of each financial year, is to prepare and give to the Minister a report on the operation of this Act in relation to that financial year.

(2) The Minister is to cause a copy of the report referred to in subsection (1) to be laid on the table of each House of Parliament within 15 sitting days of the House after its receipt by the Minister.

Offences by bodies corporate

53—(1) If a body corporate contravenes or fails to comply with any provision of this Act, each director of the body corporate is taken to have contravened or failed to comply with the same provision unless the director satisfies the court that—

- (a) the body corporate contravened or failed to comply with that provision without the director's knowledge and that the director was not reasonably able to have acquired that knowledge; or
- (b) the director used all due diligence to prevent the contravention or failure to comply by the body corporate.

(2) A director may be proceeded against and convicted under a provision in accordance with subsection (1) whether or not the body corporate has been proceeded against or has been convicted under that provision.

(3) Nothing in this section affects any liability imposed on a body corporate for an offence committed by the body corporate against this Act.

Evidentiary provisions

54—(1) In proceedings for an offence against this Act, an allegation in the complaint that, at a specified time—

- (a) a person was an employee at a specified workplace;
or
- (b) a person was an employer at a specified workplace;
or
- (c) a person was a contractor at a specified workplace;
or
- (d) a notice was given under this Act; or
- (e) a notice required to be given under this Act was not given; or
- (f) a prescribed fee has not been paid; or
- (g) a person was an inspector; or
- (h) a specified building, structure, mine or place was a workplace—

is evidence of those facts.

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

- (a) a document purporting to be a code of practice is admissible in evidence in those proceedings; and
- (b) if the court is satisfied, in respect of any matter that it is necessary for the prosecution to prove in order to establish the alleged contravention or failure to comply, that—
 - (i) any provision of the code of practice is relevant to that matter; and
 - (ii) the person failed at any material time to observe that provision of the code of practice—

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

(3) A document purporting to be published by or under the authority of the Standards Association of Australia, the British Standards Institution, the International Organisation for Standardisation, the American National Standards Institute, Standards New Zealand, the National Occupational Health and Safety Commission or any similar authority prescribed in regulations made under this Act is, on its production in a proceeding, evidence of the matters appearing in the document.

Time for instituting proceedings for offences

55—Notwithstanding anything in any other Act, proceedings for an offence against this Act may not be instituted later than 12 months after the act or omission alleged to constitute the offence.

Variation of application of requirements of regulations in certain circumstances

56—(1) The Director, by notice in writing served on an employer, may modify or vary the requirement of any regulation made under this Act if the Director is satisfied that—

- (a) the application of the requirement of the regulation in a modified or varied form would not adversely affect the health or safety of the employees or other persons in the workplace; and
- (b) the employer has effected a health and safety management policy and training programs which, in the opinion of the Director, satisfy the intent of the regulation.

(2) The requirement so modified or varied applies to the workplace until the notice is cancelled in accordance with subsection (3).

(3) The Director may by a further notice served on the employer cancel a notice made under subsection (1).

Regulations

57—(1) The Governor may make regulations for the purposes of this Act.

(2) Without limiting subsection (1), the Governor may make regulations in respect of any of the matters specified in Schedule 1.

(3) Regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.

(4) The regulations may—

- (a) provide that a contravention of, or a failure to comply with, any of the regulations is an offence; and
- (b) in respect of such an offence, provide for the imposition of—
 - (i) in the case of a body corporate, a fine not exceeding 250 penalty units and, in the case of a continuing offence, a further fine not exceeding 10 penalty units for each day during which the offence continues; and

- (ii) in the case of any other person, a fine not exceeding 100 penalty units and, in the case of a continuing offence, a further fine not exceeding 5 penalty units for each day during which the offence continues.

(5) The regulations may authorise any matter to be from time to time determined, applied or regulated by the Chief Executive or the Director.

(6) The regulations may require a building used as a workplace to comply substantially with the provisions of the *Building Regulations 1994* and the *Plumbing Regulations 1994*.

(7) The regulations may adopt either wholly or in part and with or without modification, and, either specifically or by reference, any of the standards, rules, codes or specifications of any prescribed authority, whether the standards, rules, codes or specifications are published or issued before or after the commencement of this Act.

(8) In subsection (7), “**prescribed authority**” means the Standards Association of Australia, the British Standards Institution, the International Organisation for Standardisation, the American National Standards Institute, Standards New Zealand, the National Occupational Health and Safety Commission or any similar authority prescribed in the regulations.

(9) A reference in subsection (7) to standards, rules, codes or specifications includes a reference to an amendment of those standards, rules, codes or specifications, whether the amendment is published or issued before or after the commencement of this Act.

(10) In subsection (9), “**amendment**” includes—

- (a) the omission of matter; and
- (b) the insertion of additional matter; and
- (c) the omission of matter and the substitution of other matter.

(11) Nothing in the regulations prejudices or affects the application of the *Building Regulations 1994*, the *Plumbing Regulations 1994* or the *General Fire Regulations 1975*.

(12) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.

(13) A provision referred to in subsection (12) may, if the regulations so provide, take effect from the commencement of this Act or a later day.

Repeal

58—Each Act that is specified in Schedule 2 is repealed.

Savings and transitional provisions

59—Schedule 3 has effect.

Administration of Act

60—Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990*—

- (a) the administration of this Act is assigned to the Minister for State Development and Resources; and
 - (b) the Department responsible to the Minister for State Development and Resources in relation to the administration of this Act is Tasmania Development and Resources.
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SCHEDULE 1

Section 57

REGULATIONS

1. Health, safety or welfare standards that must be complied with—
 - (a) at any workplace; or
 - (b) in the performance of any work; or
 - (c) in the use, cleaning, maintenance or transportation of any plant; or
 - (d) in the use, handling, processing, storing, transportation or disposal of any substance; or
 - (e) in the design, manufacture, importing or supplying of any plant; or
 - (f) in the manufacture or importing of any substance.
2. The safeguarding, siting, installing, testing, altering, repairing, maintaining or dismantling of any plant.
3. The testing, analysis, labelling or marking of any substance.
4. Licensing of any person, work, plant, process, substance or workplace including the assessment for, and the issue, duration, terms and conditions, variation, renewal, transfer, suspension or cancellation of, licences.
5. The monitoring of the health of employees in prescribed classes of work.
6. The notification of accidents, dangerous incidents, injuries and illnesses at a workplace.
7. Certificates of competency, or provisional certificates of competency, for persons engaged in prescribed work, including the assessment for the issue, duration, terms and conditions, variation, renewal, suspension or cancellation of those certificates and the accreditation of persons assessing applicants for those certificates.
8. The prohibition of the carrying on of prescribed activities at workplaces, or the performance of prescribed work, except by or under the supervision of persons with prescribed qualifications, training or experience or unless carried on pursuant to a licence issued under the regulations.
9. The supply, use, testing and maintenance of clothing and equipment for occupational health, safety or welfare purposes.
10. Fire-safety rules and procedures and the provision and maintenance of fire protection equipment.

Schedule 1—*continued*

11. The form and use of plant, form work, false work and related equipment.
 12. The provision of medical, nursing or first aid facilities at workplaces and the standards for those facilities.
 13. The medical examination of employees.
 14. The employment of young persons.
 15. The safety of persons in isolated or remote areas.
 16. The safety of persons in the vicinity of any workplace.
 17. The provision of information, instruction and training for the health and safety of employees including employees whose native language is not English and who are not reasonably fluent in English.
 18. The removal of asbestos from any place, the disposal of asbestos or the treatment of asbestos in any place.
 19. The safety of dams and reservoirs at mines, including approval of design and specifications, construction, maintenance and safeguarding before discontinuation of use.
 20. The safety of excavations at mines, including safeguarding on discontinuation of use and prohibiting interference with, misuse of, or damage to, measures taken for that safeguarding.
 21. Employees' safety representatives and health and safety committees.
 22. Temporary public stands.
 23. Designated workplaces.
 24. Notification of construction work.
 25. The keeping and provision of records, returns and information for the purposes of this Act.
 26. Fees for the purposes of this Act.
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SCHEDULE 2

Section 58

ACTS REPEALED*Scaffolding Act 1960**Inspection of Machinery Act 1960**Industrial Safety, Health, and Welfare Act 1977**Industrial Safety, Health, and Welfare Amendment Act 1991**Mines Inspection Act 1968**Mines Inspection Amendment Act 1989*

SCHEDULE 3

Section 59

SAVINGS AND TRANSITIONAL PROVISIONS**Interpretation**

1—In this Schedule, “**commencement day**” means the day on which this Act commences.

References to Industrial Safety, Health, and Welfare Board

2—On and after the commencement day a reference to the Industrial Safety, Health, and Welfare Board in any Act, law, instrument or document is taken to be a reference to the Workplace Safety Board of Tasmania.

Documents

3—On and after the commencement day—

- (a) any document which was addressed to, and which was purported to have been served on or notified to, the Industrial Safety, Health, and Welfare Board and which had not ceased to have effect before that day, is taken to have been served on, or notified to, the Workplace Safety Board of Tasmania; and
- (b) any document which was addressed to, and which was purported to have been served on or notified to, a person by or on behalf of the Industrial Safety, Health, and Welfare Board, and which had not ceased to have effect before that day, is taken to have been served on, or notified to, that person by the Workplace Safety Board of Tasmania.

Schedule 3—*continued***Acts, &c., done by or to Industrial Safety, Health, and Welfare Board**

4—All acts, matters and things done or omitted to be done by, or done or suffered in relation to, the Industrial Safety, Health, and Welfare Board before the commencement day have, on and after that day, the same force and effect as if they had been done or omitted to be done by, or done or suffered in relation to, the Workplace Safety Board of Tasmania.

References to certain Acts

5—On and after the commencement day—

- (a) a reference in any Act to any section, Division, Part or Schedule of the *Scaffolding Act 1960*, *Inspection of Machinery Act 1960*, *Industrial Safety, Health, and Welfare Act 1977* and *Mines Inspection Act 1968* is taken to be a reference to the equivalent provision, if any, in the *Workplace Health and Safety Act 1995*; and
- (b) a reference in any Act, law, instrument or document to the *Scaffolding Act 1960*, *Inspection of Machinery Act 1960*, *Industrial Safety, Health, and Welfare Act 1977* and *Mines Inspection Act 1968* is taken to be a reference to the *Workplace Health and Safety Act 1995*.

Appeals

6—An appeal instituted under the *Industrial Safety, Health, and Welfare Act 1977* and not finally determined by the appeal tribunal established under that Act before the commencement day is, on and after that day, to be dealt with as if this Act had not been enacted.

Record books

7—A record book required to be kept under the *Mines Inspection Act 1968* is, on and after the commencement day, taken to be a record book required to be kept under this Act.

Schedule 3—*continued***Employees' safety representatives**

8—An employees' safety representative elected under the *Industrial Safety, Health, and Welfare Act 1977* or the *Mines Inspection Act 1968* and whose certificate of appointment is in force immediately before the commencement day is, on and after that day, taken to have been elected under this Act in respect of the period for which he or she was elected under the *Industrial Safety, Health, and Welfare Act 1977* or the *Mines Inspection Act 1968*.

Chief Inspector of Mines

9—The Chief Inspector of Mines holding office under the *Mines Inspection Act 1968* immediately before the commencement day is, on and after that day, taken to have been designated as Chief Inspector of Mines under this Act.

Notices

10—A notice issued under section 13 of the *Industrial Safety, Health, and Welfare Act 1977* or under section 18 of the *Mines Inspection Act 1968* and in force immediately before the commencement day is, on and after that day, taken to be a notice issued under section 38 of this Act.

Approval of dams

11—An approval given under section 36 of the *Mines Inspection Act 1968* and in force immediately before the commencement day is, on and after that day, taken to be an approval given under this Act.

Inquiries

12—An inquiry made under section 44 of the *Mines Inspection Act 1968* and not finally determined by the person conducting it before the commencement day is, on and after that day, to be dealt with as if this Act had not been enacted.

Schedule 3—*continued***Registration of factories and shops**

13—Where a factory or shop is registered under the *Industrial Safety, Health, and Welfare Act 1977* and that registration is in force immediately before the commencement day, that factory or shop is, on and after that day, taken to have been licensed under this Act.

Certificates of competency

14—A certificate of competency granted under the *Industrial Safety, Health, and Welfare Act 1977* or the *Mines Inspection Act 1968* and in force immediately before the commencement day is, on and after that day, taken to have been granted under this Act.

[Second reading presentation speech made in:—
House of Assembly on 22 June 1995
Legislative Council on 28 June 1995]

