

Version No. 011
Equipment (Public Safety) Act 1994

Act No. 21/1994

Version incorporating amendments as at 1 July 1997

TABLE OF PROVISIONS

<i>Section</i>	<i>Page</i>
PART 1—PRELIMINARY	1
1. Purpose	1
2. Commencement	1
3. Definitions	1
4. Act to bind Crown	3
5. Application	3
6. Objects of Act	3
PART 2—EQUIPMENT AND PUBLIC SAFETY	5
7. Duties of proprietors of prescribed equipment	5
8. Duties of manufacturers, designers, importers, suppliers and people who erect or install prescribed equipment	5
9. Duties of persons in charge of prescribed equipment	6
10. Compliance with regulations is compliance with Part 2	6
11. Civil liability not affected by Part 2	6
PART 3—APPOINTMENT AND POWERS OF INSPECTORS	8
12. Appointment of inspectors	8
13. Powers of inspectors	9
14. Notice to site manager	10
15. Site manager to assist inspector	10
16. Samples	10
17. Appeal against seizure	11
18. Photographs	11
19. Interpreter	12
20. Protection against self incrimination	12
21. Offences in relation to inspections	12

<i>Section</i>	<i>Page</i>
PART 4—IMPROVEMENT AND PROHIBITION NOTICES	14
22. Inspector may issue improvement notice	14
23. Inspector may issue prohibition notice	15
24. Notices may include directions	16
25. Appeals against notices	17
PART 5—LEGAL PROCEEDINGS	19
26. General	19
27. Infringement notices	19
28. Proceedings may be brought by Authority or inspectors	21
29. Judicial notice of signature of Minister or Chief Executive of Authority	22
30. Provisions as to certain evidence	22
31. Offences by bodies corporate	22
32. Further penalties for subsequent offences	23
PART 6—GENERAL	25
33. Codes of practice	25
34. Use of codes of practice in proceedings	26
35. Delegation	27
36. Regulations	27
37. Orders with respect to prescribed equipment	29
PART 7—AMENDMENT OF OTHER ACTS	31
38. Amendment of the Occupational Health and Safety Act 1985	31
39. Amendment of Magistrates' Court Act 1989	32
52A. Equipment (Public Safety) Act 1994	32
SCHEDULE	34
<hr style="border-top: 3px double #000;"/>	
NOTES	37
1. General Information	37
2. Table of Amendments	38
3. Explanatory Details	39

Version No. 011
Equipment (Public Safety) Act 1994
Act No. 21/1994

Version incorporating amendments as at 1 July 1997

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. Purpose

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

2. Commencement

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

3. Definitions

- (1) In this Act—

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

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

- (a) any component of that equipment; and

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

(b) anything fitted, connected or appurtenant to that equipment;

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

"inspector" means an inspector appointed or deemed to be appointed under section 12;

"practicable" means practicable having regard to—

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

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

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

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

"**supply**" in relation to any prescribed equipment, includes supply and resupply by way of sale, exchange, lease, hire or hire-purchase, whether as principal or agent.

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

4. Act to bind Crown

This Act binds the Crown not only in right of Victoria, but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

5. Application

This Act does not apply to—

- (a) a workplace within the meaning of the **Occupational Health and Safety Act 1985** except a workplace which is being used for the manufacture, construction, alteration, maintenance or repair of prescribed equipment for use outside a workplace; or
- (b) prescribed equipment at a workplace except prescribed equipment which is being manufactured, constructed, altered, maintained or repaired for use outside a workplace; or
- (c) prescribed equipment being used—
 - (i) in a mine within the meaning of section 369 of the **Mines Act 1958**; or
 - (ii) in connection with work being done under a licence within the meaning of the **Mineral Resources Development Act 1990**.

6. Objects of Act

Equipment (Public Safety) Act 1994

Act No. 21/1994

The objects of this Act are—

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

PART 2—EQUIPMENT AND PUBLIC SAFETY

7. Duties of proprietors of prescribed equipment

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

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

- (1) A person who designs, manufactures, imports or supplies any prescribed equipment must—
 - (a) ensure, so far as is practicable, that the equipment is so designed and constructed as to be safe and without risks to health when properly used; and
 - (b) carry out or arrange for the carrying out of any testing and examination that may be necessary for the performance of the duty imposed by paragraph (a); and
 - (c) take any action necessary to ensure that there will be available in connection with the use of the prescribed equipment adequate information about—
 - (i) the use for which it is designed and has been tested; and
 - (ii) any conditions necessary to ensure that when put to that use it will be safe and without risks to health.
- (2) A person who erects or installs any prescribed equipment must ensure, so far as is practicable, that nothing about the way in which it is erected or installed makes it unsafe or a risk to health when properly used.

-
- (3) For the purposes of this section, prescribed equipment is not to be regarded as properly used if it is used without regard to any relevant information or advice that is available relating to its use.

9. *Duties of persons in charge of prescribed equipment*

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

10. *Compliance with regulations is compliance with Part 2*

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

11. *Civil liability not affected by Part 2*

Nothing in this Part shall be construed as—

- (a) conferring a right of action in any civil proceedings in respect of any contravention,

- whether by act or omission, of any provision of this Part; or
- (b) conferring a defence to an action in any civil proceedings or as otherwise affecting a right of action in any civil proceedings; or
 - (c) affecting the extent (if any) to which a right of action arises or civil proceedings may be taken with respect to breaches of duties imposed by the regulations; or
 - (d) taking away any right of action which a person may have in respect of a malicious and fraudulent claim that equipment is unsafe or a risk to health.
-

PART 3—APPOINTMENT AND POWERS OF INSPECTORS

12. *Appointment of inspectors*²

- (1) The Authority may appoint any officer or employee of the Authority to be an inspector for the purposes of this Act. **S. 12(1) amended by No. 13/1996 s. 35(1)(2).**
- (2) An inspector appointed under section 38(1) of the **Occupational Health and Safety Act 1985** is deemed to be an inspector under this Act.
- (3) The Authority must provide every inspector who is appointed under this section with a certificate of appointment. **S. 12(3) amended by No. 13/1996 s. 35(1).**
- (4) A certificate of appointment provided under this section is conclusive proof of the inspector's appointment.
- (5) The Authority must provide every inspector appointed under this section with an identification card. **S. 12(5) amended by No. 13/1996 s. 35(1).**
- (6) An inspector must produce an identification card provided to him or her under this section or under section 38 of the **Occupational Health and Safety Act 1985**—
- (a) if practicable, on each occasion before he or she proceeds to act under this Act; and
 - (b) on demand.
- (7) A person must not—
- (a) forge or counterfeit an identification card; or
 - (b) make use of any forged, counterfeited or false identification card; or
 - (c) impersonate the inspector named in an identification card or pretend to be an inspector.

13. Powers of inspectors

- (1) An inspector may for the purpose of the execution of this Act or the regulations—
- (a) enter, inspect and examine at all reasonable times by day or night any equipment site which the inspector considers it necessary to enter, inspect and examine for that purpose;
 - (b) enter any equipment site at any time when the inspector is under this Act or the regulations requested or required to attend at the site;
 - (c) take any equipment or materials that may be required;
 - (d) make any examination and inquiry that may be necessary to ascertain whether or not this Act or the regulations have been complied with;
 - (e) examine any prescribed equipment or substance or any other thing at the site;
 - (f) take or remove, without payment, any samples of any substance or thing that may be required for analysis;
 - (g) take possession of any prescribed equipment or thing for further examination or testing or for use as evidence;
 - (h) take photographs or measurements or make sketches or recordings;
 - (i) require the production of, examine and take copies of, any document or any part of any document;
 - (j) direct that the site or any part of the site be left undisturbed for as long as the inspector considers necessary;
-

-
- (k) exercise any other powers that are necessary or that are conferred upon the inspector by this Act or the regulations.
- (2) For the purposes of sub-section (1) an inspector may seek the assistance of any person.
- (3) ³An inspector is authorised to take affidavits for any purpose relating to or incidental to the exercise of the inspector's powers or the performance of the inspector's duties.

S. 13(3)
inserted by
No. 13/1996
s. 36.

14. *Notice to site manager*

- (1) Upon entering any equipment site, an inspector must take all reasonable steps to notify the site manager of the entry.
- (2) Upon concluding an inspection an inspector must give to the site manager information with respect to the inspector's observations and any action the inspector proposes to take in relation to the site.
- (3) A site manager must appoint a person to act as site manager for the purposes of this Act during any period that the site manager is absent from the equipment site.

15. *Site manager to assist inspector*

The site manager of an equipment site must provide such assistance as an inspector may require for any entry, inspection, examination or inquiry or for the exercise of the powers of the inspector under this Act or the regulations.

16. *Samples*

- (1) The inspector must notify the site manager if the inspector proposes to take and remove a sample from any equipment site for the purposes of analysis.

- (2) After taking a sample the inspector must—
- (a) divide the sample taken into as many parts as are necessary and mark and seal and fasten up each part in such a manner as its nature will permit; and
 - (b) if required by the site manager, deliver one part to the site manager; and
 - (c) retain one part for future comparison; and
 - (d) if it is determined that an analysis of the sample is to be made, deliver one part to an analyst for analysis.

17. *Appeal against seizure*

- (1) If under section 13(1)(g), an inspector takes possession of any prescribed equipment or thing, the proprietor of the prescribed equipment or thing may appeal to the Administrative Appeals Tribunal against that seizure.
- (2) In determining an appeal the Administrative Appeals Tribunal may—
- (a) affirm the seizure; or
 - (b) order that the equipment or thing be returned to the proprietor and give directions for that return.

18. *Photographs*

If under section 13(1)(h), an inspector takes photographs or makes sketches or recordings, the inspector must notify the site manager of that fact and the address of a place where the photographs, sketches or recordings are or will be available for inspection.

19. *Interpreter*

If an inspector uses the assistance of an interpreter—

- (a) any inquiry or requisition to any person made on behalf of the inspector by the interpreter is deemed to have been made by the inspector; and
- (b) any answer made to the interpreter is deemed to have been made to the inspector.

20. *Protection against self incrimination*

No person is required under section 13 to answer any question or give any evidence tending to self incrimination.

21. *Offences in relation to inspections*

- (1) Any person who—
 - (a) refuses access to a site to an inspector or person assisting an inspector; or
 - (b) obstructs an inspector in the exercise of the powers of the inspector under this Act or the regulations or induces or attempts to induce any other person to do so; or
 - (c) fails to produce any document required under this Act or the regulations by an inspector; or
 - (d) conceals the location or existence of any other person or any prescribed equipment from an inspector; or
 - (e) prevents or attempts to prevent any other person from assisting an inspector; or

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

- (f) in any other way, hinders, impedes or opposes an inspector in the exercise of the powers of the inspector under this Act or the regulations—
- is guilty of an offence.
- (2) Any person who assaults or directly or indirectly intimidates or threatens or attempts to intimidate or threaten an inspector or a person assisting an inspector is guilty of an offence.
- (3) Any person who is guilty of an offence against this section is liable—
- (a) if that person is a body corporate, to a penalty of not less than 50 penalty units or more than 2500 penalty units; or
- (b) in any other case—
- (i) to a penalty of not less than 10 penalty units or more than 500 penalty units; or
- (ii) to imprisonment for not more than 5 years; or
- (iii) to both the penalty and the imprisonment.
-

PART 4—IMPROVEMENT AND PROHIBITION NOTICES

22. Inspector may issue improvement notice

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

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

- (2) An improvement notice must—
- (a) state that the inspector is of the opinion that the person—
 - (i) is contravening a provision of this Act or the regulations; or
 - (ii) has contravened such a provision in circumstances that make it likely that the contravention will continue or be repeated; and
 - (b) state the reasons for that opinion; and
 - (c) specify the provision in this Act or the regulations in respect of which that opinion is held; and
 - (d) specify the day (being a day more than 7 days after the day on which the notice is issued) before which the person is required to remedy the contravention or likely contravention or the matters or activities

occasioning the contravention or likely contravention.

- (3) A person—
- (a) to whom an improvement notice is issued in relation to which an appeal has not been made under section 25; and
 - (b) who does not comply with the improvement notice—
- is guilty of an offence.

23. *Inspector may issue prohibition notice*

- (1) If an inspector is of the opinion that at any equipment site there is occurring or may occur any activity which involves or will involve an immediate risk to the health and safety of any person, the inspector may issue a prohibition notice to the person who has or may be reasonably presumed to have control over the activity.
- (2) A prohibition notice must prohibit the carrying on of the activity until an inspector certifies in writing that the matters which give or will give rise to the risk are remedied.
- (3) A prohibition notice must—
 - (a) state that the inspector is of the opinion that at the site there is occurring or may occur an activity which involves or will involve an immediate risk to the health and safety of any person; and
 - (b) state the reasons for that opinion; and
 - (c) specify the activity which in the inspector's opinion involves or will involve the risk and the matters which give or will give rise to the risk; and

-
- (d) if, in the inspector's opinion, the activity involves a contravention or likely contravention of any provision of this Act or the regulations, specify that provision and state the reasons for that opinion.
- (4) A person—
- (a) to whom a prohibition notice is issued in relation to which an appeal has not been made under section 25; and
 - (b) who does not comply with the prohibition notice—
- is guilty of an offence.
- (5) A person who is guilty of an offence under this section is liable—
- (a) if that person is a body corporate, to a penalty of not less than 50 penalty units or more than 2500 penalty units;
 - (b) in any other case—
 - (i) to a penalty of not less than 10 penalty units or more than 500 penalty units; or
 - (ii) to imprisonment for not more than 5 years; or
 - (iii) to both the penalty and the imprisonment.
- (6) If an appeal has been made under section 25 an inspector must not give a certificate under subsection (2) until after the appeal is withdrawn or decided.

24. Notices may include directions

- (1) An inspector may include in an improvement notice or a prohibition notice, directions as to the measures to be taken to remedy any

contravention, likely contravention, risk, matters or activities to which the notice relates.

- (2) Any direction under sub-section (1) may—
- (a) refer to any approved code of practice; and
 - (b) offer the person to whom it is issued a choice of ways in which to remedy the contravention, likely contravention, risk, matters or activities.

25. Appeals against notices

- (1) A person to whom an improvement notice or prohibition notice is issued may within 7 days after the notice is issued appeal in writing against the notice to the Administrative Appeals Tribunal.
- (2) In determining the appeal, the Administrative Appeals Tribunal must inquire into the circumstances relating to the notice and may—
- (a) affirm the notice; or
 - (b) affirm the notice with such modifications as it thinks fit; or
 - (c) cancel the notice.
- (3) Pending the determination of the Administrative Appeals Tribunal the operation of the notice—
- (a) in the case of an improvement notice, is suspended; and
 - (b) in the case of a prohibition notice, continues, subject to any decision to the contrary made by the Administrative Appeals Tribunal.
- (4) If—
- (a) the Administrative Appeals Tribunal affirms an improvement notice or a prohibition notice or affirms a notice with modifications; and
-

(b) the person to whom the improvement notice or prohibition notice was issued does not comply with the notice as affirmed—

that person is guilty of an offence and is liable to penalty applying in the case of an offence against section 22 or 23 (as the case requires).

PART 5—LEGAL PROCEEDINGS

26. General

- (1) Any person who contravenes or fails to comply with any provision of this Act (except sections 12(3) or (5), 25(2), 28(5) or (6), 29 and 33(4) or (5)) or the regulations is guilty of an offence against this Act.
- (2) Any person who is guilty of an offence against this Act for which no penalty is expressly provided is liable to a penalty of not more than—
 - (a) if that person is a body corporate, 400 penalty units; or
 - (b) in any other case, 100 penalty units.
- (3) An offence against this Act (not being a contravention of or failure to comply with a provision of the regulations) is an indictable offence.

27. Infringement notices

- (1) Regulations under section 36 may provide for a person to be served with an infringement notice specifying a fixed penalty of not more than 10 penalty units for an offence against this Act as an alternative to a prosecution for the offence.
- (2) The regulations must specify—
 - (a) the offences to which this alternative applies; and
 - (b) the fixed penalty for each of the offences; and
 - (c) the form of infringement notices; and
 - (d) the person or class of persons who may issue infringement notices; and

-
- (e) the person to whom a fixed penalty must be paid; and
 - (f) the period within which a fixed penalty must be paid in order to avoid prosecution.
- (3) An infringement notice must state—
- (a) the name of the alleged offender; and
 - (b) the nature, in general terms, of the offence alleged to have been committed; and
 - (c) the date, time and place of the alleged offence; and
 - (d) the amount of the fixed penalty; and
 - (e) the period within which and the place where the fixed penalty may be paid; and
 - (f) that the alleged offender is entitled to disregard the infringement notice and defend the prosecution for the alleged offence in court.
- (4) A person who issued an infringement notice may withdraw it within 28 days after service by serving a withdrawal notice in the prescribed form on the person on whom the infringement notice was served.
- (5) If the person pays the penalty before the infringement notice is withdrawn, the person is entitled to a refund of the penalty.
- (6) If the person pays the penalty within the time specified in the infringement notice or, if the person who issued the notice allows, before proceedings are commenced against the person in respect of the alleged offence—
- (a) further proceedings are not to be taken against the person; and
-

-
- (b) a conviction must not be recorded against that person for the offence.
- (7) A penalty paid under this section is to be dealt with in the same way as a penalty paid as a result of a conviction.
- (8) If—
- (a) a person served with an infringement notice has not paid the penalty within the time specified in the notice; or
- (b) an infringement notice is withdrawn—
- proceedings may still be taken or continued for the alleged offence.

28. *Proceedings may be brought by Authority or inspectors*⁴

S. 28(1)
amended by
No. 13/1996
s. 37(a).

- (1) Proceedings for an offence against this Act may be brought by the Authority or an inspector.

S. 28(2)
amended by
No. 13/1996
s. 37(b).

- (2) No proceedings for an offence against this Act may be brought by an inspector without the authority in writing of the Authority given generally or in any particular case.
- (3) An authority under sub-section (2) is sufficient authority to continue proceedings in any case where the Court amends the charge, warrant or summons.

- (4) An inspector may conduct before the Court any proceedings brought by the inspector.

S. 28(5)
amended by
No. 13/1996
s. 37(c).

- (5) The Minister must issue to the Authority and to inspectors guidelines with respect to the prosecution of offences generally, but must not issue guidelines or give directions in relation to any particular prosecution.
-

- (6) Any guidelines issued by the Minister under subsection (5) must be published in the Government Gazette.

29. *Judicial notice of signature of Minister or Chief Executive of Authority*⁵

S. 29
amended by
No. 13/1996
s. 38(a)(b).

All courts must take judicial notice of the signature of the Minister or the Chief Executive of the Authority on every document authorised or required to be signed by the Minister or the Chief Executive of the Authority for the purposes of this Act or the regulations.

30. *Provisions as to certain evidence*

In any proceedings for an offence against this Act—

- (a) it is sufficient to allege that any building, structure, ship, boat or place is an equipment site within the meaning of this Act without further allegation;
- (b) it is sufficient to state the name of the ostensible site manager of any equipment site or proprietor of any prescribed equipment or person in charge of any prescribed equipment or the name or title by which the site manager or proprietor or person in charge is usually known;
- (c) if the age of any person is material and there is insufficient evidence of the actual age of the person, the court may have regard to the apparent age of the person.

31. *Offences by bodies corporate*

- (1) If an offence against this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any wilful neglect on the part of, an officer of the body corporate or a person

purporting to act as an officer, that officer or person is also guilty of that offence and liable to the penalty for that offence.

- (2) When in any proceedings under this Act it is necessary to establish the intention of a body corporate it is sufficient to show that a servant or agent of the body corporate had that intention.
- (3) In sub-section (1) "**officer**" in relation to a body corporate means—
 - (a) a director, secretary or executive officer of the body corporate; or
 - (b) any person in accordance with whose directions or instructions the directors of the body corporate are accustomed to act; or
 - (c) a person concerned in the management of the body corporate.

32. Further penalties for subsequent offences

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

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

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

PART 6—GENERAL

33. *Codes of practice*

- (1) For the purpose of providing practical guidance to proprietors, manufacturers, designers, importers, suppliers, persons in charge of prescribed equipment and any other person who may be placed under an obligation by or under this Act, the Minister may approve any code of practice.
- (2) A code of practice may apply, adopt, incorporate or refer to any document formulated or published by any body or authority as in force at the time the code of practice is approved or as amended, formulated or published from time to time.
- (3) The Minister may approve any revision of the whole or any part of a code of practice or revoke the approval of a code of practice.
- (4) The Minister must cause to be published in the Government Gazette notices of—
 - (a) the approval of a code of practice; and
 - (b) the approval of a revision of the whole or any part of a code of practice; and
 - (c) the revocation of approval of a code of practice.
- (5) ⁶The Minister must cause a copy—
 - (a) of every approved code of practice; and
 - (b) if an approved code of practice has been revised and that revision has been approved, of every approved code of practice as so revised; and
 - (c) if an approved code of practice applies incorporates or refers to any other document, of every such document—

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

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

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

34. *Use of codes of practice in proceedings*

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

- (a) the approved code of practice is admissible in evidence in those proceedings; and
- (b) if the court is satisfied in relation to any matter which it is necessary for the prosecution to prove in order to establish the alleged contravention or failure that—

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

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

35. Delegation

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

36. Regulations⁷

- (1) The Governor in Council may make regulations declaring any equipment to be prescribed equipment for the purposes of this Act and the regulations made under this Act.
- (2) The Governor in Council may make regulations for or with respect to the health and safety of persons in relation to prescribed equipment and at equipment sites.
- (3) Without in any way limiting the generality of sub-section (2), regulations may be made for the purposes of that sub-section for or with respect to any of the matters specified in the Schedule.

- (4) Any regulations made under this section may—
- (a) be general or may be restricted in operation as to time, place, persons or circumstances whether that time, place, person or circumstance is determined or ascertainable before, at or after the making of the regulations;
 - (b) apply, adopt, incorporate or refer to, with or without modification, any document formulated or published by any body or authority as in force at the time the regulation is made or as amended, formulated or published from time to time;
 - (c) make different prescriptions or impose different requirements in respect of different classes, sub-classes or kinds of equipment, equipment sites, activities, persons or circumstances;
 - (d) leave any matter or thing to be from time to time determined applied or approved by the Authority, an inspector, or any other prescribed person or body of persons;
 - (e) provide that the Authority may grant exemptions in respect of any requirement of or prohibition in the regulations upon such terms and conditions as are prescribed;
 - (f) confer powers or impose duties in connection with the regulations on the Authority, an inspector, any government department, any public authority, the council of any municipal district or any other prescribed person or body of persons.
- (5) Where any regulations are made pursuant to clause 9 of the Schedule, those regulations must provide that any person who may be affected by a

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

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

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

decision of any other person or body of persons in relation to—

- (a) the refusal to grant, renew or transfer the registration of or a licence in respect of any prescribed equipment or equipment site; or
- (b) the variation of the terms and conditions upon which the registration of or a licence in respect of any prescribed equipment or equipment site were granted; or
- (c) the cancellation or suspension of the registration of or a licence in respect of any prescribed equipment or equipment site—

is entitled—

- (d) to be heard by that other person or body of persons in relation to that decision and to be given reasons for that decision; and
 - (e) to appeal against that decision to the court, tribunal, person or body of persons that is prescribed.
- (6) Any regulations made under clause 9 of the Schedule must also provide that where a person has appealed against a decision the operation of that decision is stayed pending the determination of that appeal.

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

* * * * *

37. Orders with respect to prescribed equipment

- (1) The Governor in Council may by Order published in the Government Gazette prohibit absolutely or subject to conditions or restrictions the manufacture, supply or use of any prescribed equipment when in the opinion of the Governor in

Council it is expedient for the public safety to make the Order.

- (2) A person who contravenes an Order made under sub-section (1) is guilty of an offence.
-

PART 7—AMENDMENT OF OTHER ACTS

38. *Amendment of the Occupational Health and Safety Act 1985*

- (1) In section 59 of the **Occupational Health and Safety Act 1985**—
 - (a) in sub-section (3)(c) after "classes" **insert** ", sub-classes";
 - (b) after sub-section (6) **insert**—

"(6A) If a regulation made under clause 43 or 43A of Schedule One provides for a refund which requires a payment from the Consolidated Fund, the Consolidated Fund is hereby appropriated accordingly."
 - (2) In clause 43 of Schedule One to the **Occupational Health and Safety Act 1985** after "regulations" **insert** "and prescribing the person or persons or body of persons to which the fees are payable and providing for the distribution of those fees and for the refund of fees in prescribed circumstances."
 - (3) After clause 43 of Schedule One to the **Occupational Health and Safety Act 1985**, **insert**—

"43A. Prescribing circumstances in which permit fees paid under the **Scaffolding Act 1971** may be refunded."
 - (4) Item 43A of Schedule One to the **Occupational Health and Safety Act 1985** is repealed on the day which is 12 months after the commencement of section 3 of this Act.
-

39. Amendment of Magistrates' Court Act 1989

In Schedule 4 to the **Magistrates' Court Act 1989**, after item 52 insert—

"52A. Equipment (Public Safety) Act 1994

Indictable offences under the **Equipment (Public Safety) Act 1994** but subject to the following penalties which may be imposed by the Court:

- (a) For an offence against section 21 or 23 of that Act or an offence to which section 32 of that Act applies—
 - (i) in the case of a body corporate, a penalty of not less than 50 penalty units and not more than 400 penalty units and, if the defendant has previously been convicted of an offence against the **Equipment (Public Safety) Act 1994** (whether the same offence or any other offence), the Court may, if it considers it appropriate to do so, impose an additional penalty of not less than 50 penalty units and not more than 400 penalty units; or
 - (ii) in any other case, a penalty of not less than 10 penalty units and not more than 200 penalty units or imprisonment for a period not exceeding 2 years or both and, if the defendant has previously been convicted of an offence against the **Equipment (Public Safety) Act 1994** (whether the same or any other offence), the Court may, if it considers it appropriate to do

so, impose an additional penalty of not less than 10 penalty units and not more than 200 penalty units or imprisonment for a period not exceeding 2 years or both;

- (b) For any other indictable offence under that Act—
- (i) in the case of a body corporate, a penalty of not more than 400 penalty units and, if the defendant has previously been convicted of an offence against the **Equipment (Public Safety) Act 1994** (whether the same offence or any other offence), the Court may, if it considers it appropriate to do so, impose an additional penalty of not less than 50 penalty units and not more than 400 penalty units; or
- (ii) in any other case, a penalty of not more than 100 penalty units and, if the defendant has previously been convicted of an offence against the **Equipment (Public Safety) Act 1994** (whether the same or any other offence), the Court may, if it considers it appropriate to do so, impose an additional penalty of not less than 10 penalty units and not more than 200 penalty units or imprisonment for a period not exceeding 2 years or both."
-

SCHEDULE⁸

Subject matter for Regulations

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

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

13. Prescribing the circumstances in which registration of or any licence in respect of any prescribed equipment may be cancelled or suspended.
 14. Providing for the variation of the terms and conditions of registration of or any licence in respect of any prescribed equipment.
 15. Prescribing the manner of application for the granting, renewal or transfer of registration of or any licence in respect of any prescribed equipment.
 16. Prohibiting the carrying on of prescribed activities at equipment sites or the performance of prescribed work or the operation of prescribed equipment at equipment sites except under the supervision of or by persons with prescribed qualifications or experience.
 17. Requiring proprietors, manufacturers and suppliers of prescribed equipment to provide information in the manner prescribed for the guidance of persons operating or using prescribed equipment with respect to the safe use of the equipment.
 18. Regulating or requiring the taking of any action or precautions to avoid any accident or dangerous occurrence.
 19. Prohibiting or requiring the taking of any action in the event of any accident or dangerous occurrence.
 20. Regulating or requiring in prescribed circumstances the provision and use of protective clothing and equipment and rescue equipment.
 21. Prescribing standards in relation to the use of, including standards of exposure to, any physical, biological, chemical or psychological hazard.
 22. Prescribing the fees chargeable or payable for doing any act or providing any service for the purposes of the regulations and prescribing the person or persons or body of persons to which the fees are payable and providing for the distribution of those fees and for the refund of fees in prescribed circumstances.
 23. Prescribing the manner of serving notices under this Act.
 24. Prescribing forms for the purposes of this Act and the regulations.
-

Equipment (Public Safety) Act 1994

Act No. 21/1994

Sch.

-
25. Providing for contravention of or a failure to comply with a provision of a regulation to be an indictable offence or a summary offence.
 26. Prescribing penalties for any contravention of or failure to comply with the regulations not exceeding the penalties set out in section 26(2).
 27. Prescribing any matter or thing which by this Act is required or permitted to be prescribed for the purposes of this Act.
-
-

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

NOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 31 March 1994

Legislative Council: 26 April 1994

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

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

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

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

Notes

2. Table of Amendments

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

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

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

3. Explanatory Details

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

42. Definitions

In this Division—

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

43. Interpretation of Legislation Act 1984 not affected

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

44. Superseded references

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

45. Proceedings in relation to Minister

- (1) On the commencement of this section, the Authority is substituted for the Minister as a party in any proceedings commenced or made by or against or in relation to the Minister under the
-

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

Principal Act or the regulations made under that Act and existing immediately before that commencement.

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

46. Documents etc issued by Minister

- (1) On and after the commencement of this section—
 - (a) any confirmation, condition, exemption, notice, requirement, determination, approval or other instrument or document issued, served, granted, made or given under the Principal Act or the regulations made under the Principal Act by the Minister is deemed to have been issued, served, granted, made or given by the Authority; and
 - (b) any action taken or decision made under the Principal Act or the regulations made under the Principal Act by the Minister is deemed to have been taken or made by the Authority.

- (2) This section does not apply to—
-

- (a) any guidelines issued by the Minister under section 28(5) of the Principal Act; or
- (b) any code of practice approved by the Minister or notice caused to be published by the Minister under section 33 of the Principal Act.

47. *Inspectors deemed to be inspectors appointed by Authority*

On and after the commencement of this section—

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

48. *Proceedings in relation to inspectors*

On and after the commencement of this section, an inspector appointed by the Authority may continue and complete any proceedings under the Principal Act or the regulations made under that

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

Act commenced or made by or against or in relation to a former inspector and existing immediately before that commencement.

49. Documents etc. issued by inspector

On and after the commencement of this section—

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

² S. 12: See note 1.

³ S. 13(3): See note 1.

⁴ S. 28: See note 1.

⁵ S. 29: See note 1.

⁶ S. 33(5): See note 1.

⁷ S. 36: See note 1.

⁸ Sch: See note 1.