

OCCUPATIONAL HEALTH AND SAFETY ACT, 1983, No. 20

New South Wales



ANNO TRICESIMO SECUNDO

ELIZABETHÆ II REGINÆ

Act No. 20, 1983.

An Act to secure the health, safety and welfare of persons at work; to amend certain Acts; and for other purposes. [Assented to, 21st April, 1983.]

Occupational Health and Safety.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.

PRELIMINARY.

Short title.

1. This Act may be cited as the "Occupational Health and Safety Act, 1983".

Commencement.

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Arrangement.

3. This Act is arranged as follows:—

PART I.—PRELIMINARY—ss. 1–6.

PART II.—THE OCCUPATIONAL HEALTH, SAFETY AND REHABILITATION COUNCIL OF NEW SOUTH WALES—ss. 7–14.

PART III.—GENERAL PROVISIONS RELATING TO HEALTH, SAFETY AND WELFARE AT WORK—ss. 15–31.

DIVISION 1.—*General duties*—ss. 15–22.

DIVISION 2.—*Occupational health and safety committees*—ss. 23–26.

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DIVISION 3.—*Notification of accidents and other matters—ss. 27, 28.*

DIVISION 4.—*Inspection—ss. 29–31.*

PART IV.—ASSOCIATED OCCUPATIONAL HEALTH AND SAFETY LEGISLATION—*ss. 32–44.*

DIVISION 1.—*Preliminary—ss. 32–34.*

DIVISION 2.—*Factories, shops and industries legislation—ss. 35, 36.*

DIVISION 3.—*Construction safety legislation—ss. 37, 38.*

DIVISION 4.—*Mining legislation—ss. 39, 40.*

DIVISION 5.—*Dangerous goods legislation—ss. 41, 42.*

DIVISION 6.—*Rural workers accommodation legislation—ss. 43, 44.*

PART V.—REGULATIONS—*ss. 45, 46.*

PART VI.—OFFENCES—*ss. 47–53.*

SCHEDULE 1.—PROVISIONS RELATING TO THE MEMBERS AND PROCEDURE OF THE COUNCIL.

SCHEDULE 2.—AMENDMENTS TO THE FACTORIES, SHOPS AND INDUSTRIES ACT, 1962.

SCHEDULE 3.—AMENDMENTS TO THE CONSTRUCTION SAFETY ACT, 1912.

SCHEDULE 4.—AMENDMENTS TO THE MINES INSPECTION ACT, 1901.

SCHEDULE 5.—AMENDMENTS TO THE COAL MINES REGULATION ACT, 1982.

SCHEDULE 6.—AMENDMENTS TO THE DANGEROUS GOODS ACT, 1975.

SCHEDULE 7.—AMENDMENTS TO THE RURAL WORKERS ACCOMMODATION ACT, 1969.

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Interpretation.

4. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

“associated occupational health and safety legislation” means the provisions declared by Part IV to be associated occupational health and safety legislation;

“Council” means the Occupational Health, Safety and Rehabilitation Council of New South Wales constituted by this Act;

“domestic premises” means premises occupied as a private dwelling;

“employee” means an individual who works under a contract of employment or apprenticeship;

“employer” means a corporation which, or an individual who, employs persons under contracts of employment or apprenticeship;

“occupational health and safety legislation” includes—

- (a) the provisions of this Act and the regulations; and
- (b) the associated occupational health and safety legislation;

“place of work” means premises where persons work;

“plant” includes any machinery, equipment and appliance;

“premises” includes—

- (a) any land, building or part of any building;
- (b) any vehicle, vessel or aircraft;
- (c) any installation on land, on the bed of any waters or floating on any waters; and
- (d) any tent or movable structure;

“regulation” means a regulation under this Act;

“self-employed person” means an individual who works for gain or reward otherwise than under a contract of employment or apprenticeship, whether or not he himself employs others;

“substance” means any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour;

“work” means work as an employee or as a self-employed person.

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(2) For the purposes of this Act, risks arising out of the activities of persons at work shall be treated as including risks attributable to the manner of conducting an undertaking, the plant or substances used for the purposes of an undertaking and the condition of premises so used and any part of them.

(3) For the purposes of this Act—

- (a) an employee is at work throughout the time when he is at his place of work, but not otherwise; and
- (b) a self-employed person is at work throughout such time as he devotes to work as a self-employed person.

(4) A reference in this Act to—

- (a) a function includes a reference to a power, authority and duty; and
- (b) the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

Objects.

5. (1) The objects of this Act are—

- (a) to secure the health, safety and welfare of persons at work;
- (b) to protect persons at a place of work (other than persons at work) against risks to health or safety arising out of the activities of persons at work;
- (c) to promote an occupational environment for persons at work which is adapted to their physiological and psychological needs; and
- (d) to provide the means whereby the associated occupational health and safety legislation may be progressively replaced by comprehensive provisions made by or under this Act.

(2) Subsection (1) (d) does not apply to the mining legislation declared by Division 4 of Part IV to be associated occupational health and safety legislation.

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(3) The provisions of any paragraph of subsection (1) shall not be construed as limiting or being limited by the operation of any other provision of this Act.

Act to bind Crown.

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

PART II.**THE OCCUPATIONAL HEALTH, SAFETY AND REHABILITATION COUNCIL OF
NEW SOUTH WALES.****Interpretation.**

7. In this Part and in Schedule 1—

“Chairman” means the Chairman of the Council;

“committee” means a committee of the Council;

“member” means a member of the Council.

Constitution of the Council.

8. (1) There is hereby constituted a corporation under the corporate name of the “Occupational Health, Safety and Rehabilitation Council of New South Wales”.

(2) The Council—

(a) shall have and may exercise the functions conferred or imposed on it by or under this or any other Act;

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- (b) shall, for the purposes of any Act, be deemed to be a statutory body representing the Crown; and
- (c) shall, in the exercise of its functions (except in relation to the contents of a report or recommendation made by it to the Minister), be subject to the control and direction of the Minister.

Provisions relating to constitution and procedure of the Council.

9. (1) The Council shall consist of 9 members of whom—

- (a) one shall be the Co-ordinator of Occupational Health, Safety and Rehabilitation Services appointed under and subject to the Public Service Act, 1979;
- (b) one shall be the person holding or acting in the office of Under Secretary of the Department of Industrial Relations;
- (c) 3 shall be persons (of whom at least one shall be a woman) appointed by the Minister from a panel of 6 persons (of whom at least one shall be a woman) nominated by the Labor Council of New South Wales;
- (d) 3 shall be persons appointed by the Minister from a panel of 6 persons nominated by such bodies or organisations representing employers as are approved by the Minister; and
- (e) one shall be a person appointed by the Minister on the nomination of the Minister for Health.

(2) The member referred to in subsection (1) (a) shall be the Chairman of the Council.

(3) Where, for the purposes of subsection (1) (c) or (d), nominations of persons to constitute a panel are not made within the time or in the manner specified by the Minister in a written notice given to the body or organisation entitled to make the nominations, the Minister may appoint a

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person to be a member instead of the person required to be appointed from that panel and the person so appointed shall be deemed to have been duly nominated.

(4) Schedule 1 has effect with respect to the members and procedure of the Council.

Functions of the Council.

10. The Council may, and when requested by the Minister to do so shall, carry out investigations and make reports and recommendations to the Minister with respect to any matter relating to the objects of this Act and, in particular, with respect to—

- (a) changes it considers to be desirable to occupational health and safety legislation;
- (b) the improvement of the administration and enforcement of occupational health and safety legislation;
- (c) the fostering of a co-operative consultative relationship between management and labour on the health, safety and welfare of persons at work;
- (d) the special problems with respect to occupational health, safety and welfare of women, persons of non-English speaking background, handicapped persons or other groups in the community;
- (e) the establishment of adequate methods of control of industrial chemicals at a place of work;
- (f) the statistical analysis of occupationally related deaths and injuries;
- (g) the provision of health care facilities at a place of work;
- (h) the fostering of the development and adoption by law of industry codes of practice related to occupational health, safety and welfare;
and
- (i) the development of rehabilitation plans and facilities to assist persons injured at a place of work.

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Committees.**11. (1) The Council—****(a) shall establish—**

- (i) a committee for the purpose of assisting it to exercise its functions in relation to persons of non-English speaking background;
 - (ii) a committee for the purpose of assisting it to exercise its functions in relation to the rehabilitation of injured persons and to handicapped persons; and
 - (iii) a committee for the purpose of assisting it to exercise its functions in relation to the coal industry;
- (b) may establish committees in respect of different industries for the purpose of assisting it to exercise its functions in relation to industry codes of practice; and
- (c) may establish such other committees as it thinks fit for the purpose of assisting it to exercise its other functions.

(2) A person may be appointed as a member of a committee whether or not he is a member of the Council.

(3) The procedure for the calling of meetings of a committee and for the conduct of business at those meetings shall, subject to any directions given by the Council, be as determined by the committee.

Staff.

12. The Council may, with the approval of the Minister and of the Minister administering a government department or an administrative office, arrange for the use of the services of any staff or facilities of the department or office.

Delegation.

13. The Council may authorise a committee, a member or a person of whose services the Council makes use pursuant to section 12—

- (a) to carry out any investigation or to make any report or recommendation under this Part on its behalf; or

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- (b) to carry out any such investigation or to make any such report or recommendation for the consideration of the Council.

Annual report.

14. (1) As soon as practicable after 30th June, but on or before 31st December, in each year, the Council shall prepare and forward to the Minister a report of its activities for the 12 months ending on 30th June in that year.

(2) The Minister shall lay the report or cause it to be laid before both Houses of Parliament as soon as practicable after the receipt by him of the report.

PART III.**GENERAL PROVISIONS RELATING TO HEALTH,
SAFETY AND WELFARE AT WORK.****DIVISION 1.—General duties.****Employers to ensure health, safety and welfare of their employees.**

15. (1) Every employer shall ensure the health, safety and welfare at work of all his employees.

(2) Without prejudice to the generality of subsection (1), an employer contravenes that subsection if he fails—

- (a) to provide or maintain plant and systems of work that are safe and without risks to health;
- (b) to make arrangements for ensuring safety and absence of risks to health in connection with the use, handling, storage or transport of plant and substances;

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- (c) to provide such information, instruction, training and supervision as may be necessary to ensure the health and safety at work of his employees;
- (d) as regards any place of work under the employer's control—
 - (i) to maintain it in a condition that is safe and without risks to health; or
 - (ii) to provide or maintain means of access to and egress from it that are safe and without any such risks; or
- (e) to provide or maintain a working environment for his employees that is safe and without risks to health and adequate as regards facilities for their welfare at work.

Penalty: \$50,000 in the case of a corporation and \$5,000 in any other case.

Employers and self-employed persons to ensure health and safety of persons other than employees at places of work.

16. (1) Every employer shall ensure that persons not in his employment are not exposed to risks to their health or safety arising from the conduct of his undertaking while they are at his place of work.

(2) Every self-employed person shall ensure that persons not in his employment are not exposed to risks to their health or safety arising from the conduct of his undertaking while they are at his place of work.

Penalty: \$50,000 in the case of a corporation and \$5,000 in any other case.

Persons in control of workplaces, etc , used by non-employees to ensure health and safety.

17. (1) Each person who has, to any extent, control of—

- (a) non-domestic premises which have been made available to persons (not being his employees) as a place of work, or the means of access thereto or egress therefrom; or

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- (b) any plant or substance in any non-domestic premises which has been provided for the use or operation of persons at work (not being his employees),

shall take such measures as it is reasonable for a person in his position to take to ensure that the premises, the means of access thereto or egress therefrom or the plant or substance, as the case may be, are or is safe and without risks to health.

Penalty: \$50,000 in the case of a corporation and \$5,000 in any other case.

(2) Where a person has, by virtue of any contract or lease, an obligation of any extent in relation to—

- (a) the maintenance or repair of any premises referred to in subsection (1) (a) or any means of access thereto or egress therefrom; or
- (b) the safety of, or the absence of risks to health arising from, any plant or substance referred to in subsection (1) (b),

that person shall be treated, for the purposes of subsection (1), as being a person who has control of the thing to which his obligation extends.

(3) A reference in this section to a person having control of any thing is a reference to a person having control of the thing in connection with the carrying on by him of a trade, business or other undertaking (whether for profit or not).

Manufacturers, suppliers, etc., to ensure health and safety as regards plant and substances for use at work.

18. (1) In this section—

“credit-sale agreement” means an agreement for the sale of goods, under which the purchase price or part of it is payable by instalments, but which is not a hire-purchase agreement;

“hire-purchase agreement” includes—

- (a) a hiring of goods with an option to purchase; and

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- (b) an agreement for the purchase of goods by instalments (whether the agreement describes the instalments as rent or hire or otherwise),
but does not include any agreement whereby the property in the goods passes at the time of the agreement or upon or at any time before delivery of the goods;
- “lease” means any kind of agreement or arrangement under which payments are, or are to be, made for the supply of goods for use by any person, except a credit-sale agreement, a hire-purchase agreement or a contract of sale;
- “manufacture” includes design;
- “plant for use at work” means any plant designed for use or operation (whether exclusively or not) by persons at work, and includes any article designed for use as a component in, or an accessory to, any such plant;
- “substance for use at work” means any substance intended for use (whether exclusively or not) by persons at work;
- “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 for another.
- (2) A person who manufactures or supplies any plant for use at work or any substance for use at work shall—
- (a) ensure that the plant or substance is safe and without risks to health when properly used;
 - (b) carry out or arrange for the carrying out of such research, testing and examination as may be necessary for the purpose of the discovery and the elimination or minimisation of any risks to health or safety to which the plant or substance may give rise; and
 - (c) take such steps as are necessary to make available in connection with the use of the plant or substance at work adequate information—
 - (i) about the use for which the plant is designed and about any conditions necessary to ensure that, when put to that use, the plant will be safe and without risks to health; or

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- (ii) about the results of any relevant tests which have been carried out on or in connection with the substance and about any conditions necessary to ensure that the substance will be safe and without risks to health when properly used.

(3) A person who erects or installs any plant for use at work in any premises where that plant is to be used by persons at work shall ensure that nothing about the way in which it is erected or installed makes it unsafe or a risk to health when properly used.

(4) Nothing in this section shall be taken to require a person to repeat any research, testing or examination which has been carried out otherwise than by him or at his instance, in so far as it is reasonable for him to rely on the results thereof for the purposes of this section.

(5) A requirement imposed on any person by any of the provisions of this section shall extend only to things done in the course of a trade, business or other undertaking carried on by him (whether for profit or not).

(6) Where a person manufactures or supplies any plant for or to another on the basis of a written undertaking by that other to take specified steps sufficient to ensure, so far as is reasonably practicable, that the plant will be safe and without risks to health when properly used, the undertaking shall have the effect of relieving the first-mentioned person from the requirements, in relation to the plant, of subsection (2) (a) to such extent as is reasonable having regard to the terms of the undertaking.

(7) Where a person (in this subsection referred to as "the ostensible supplier") supplies any plant for use at work or substance for use at work to another (in this subsection referred to as "the customer") under a hire-purchase agreement or credit-sale agreement, and the ostensible supplier—

- (a) carries on the business of financing the acquisition of goods by others by means of any such agreements; and
- (b) in the course of that business acquired his interest in the plant or substance supplied to the customer for the purpose of financing its acquisition by the customer from a third person (in this subsection referred to as "the effective supplier"),

the effective supplier and not the ostensible supplier shall be treated for the purposes of this section as supplying the plant or substance to the customer, and any requirement imposed by this section on suppliers shall accordingly fall on the effective supplier and not on the ostensible supplier.

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(8) Where a person (in this subsection referred to as "the ostensible supplier") supplies any plant for use at work to another (in this subsection referred to as "the customer") under a lease, and the ostensible supplier—

- (a) carries on the business of financing the use of goods by others by means of leases;
- (b) in the course of that business acquired his interest in the plant supplied to the customer for the purpose of financing its provision to the customer by a third person (in this subsection referred to as "the effective supplier"); and
- (c) has not had physical possession of the plant or has had physical possession of the plant only for the purpose of passing it to the customer,

the effective supplier and not the ostensible supplier shall be treated for the purposes of this section as supplying the plant to the customer, and any requirement imposed by this section on suppliers shall accordingly fall on the effective supplier and not on the ostensible supplier.

(9) For the purposes of this section, any plant or substance is not to be regarded as properly used where it is used without regard to any relevant information or advice relating to its use which has been made available by a person by whom it was manufactured or supplied.

(10) Nothing in this section shall affect the operation of the Sale of Goods Act, 1923, or the Consumer Protection Act, 1969.

Penalty: \$50,000 in the case of a corporation and \$5,000 in any other case.

Employees at work to take care of others and to co-operate with employer.

19. Every employee while at work—

- (a) shall take reasonable care for the health and safety of persons who are at his place of work and who may be affected by his acts or omissions at work; and

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- (b) shall, as regards any requirement imposed in the interests of health, safety and welfare on his employer or any other person by or under this Act or the associated occupational health and safety legislation, co-operate with him so far as is necessary to enable that requirement to be complied with.

Penalty: \$1,000.

Person not to interfere with or misuse things provided for health, safety and welfare.

20. A person shall not intentionally or recklessly interfere with or misuse anything provided in the interests of health, safety and welfare in pursuance of this Act or the associated occupational health and safety legislation.

Penalty: \$1,000.

Employer not to charge employees for things done or provided pursuant to statutory requirement.

21. An employer shall not levy or permit to be levied on any of his employees any charge in respect of anything done or provided in pursuance of any specific requirement made by or under this Act or the associated occupational health and safety legislation.

Penalty: \$50,000 in the case of a corporation and \$5,000 in any other case.

Civil liability not affected by this Division.

22. Nothing in this Division shall be construed—

- (a) as conferring a right of action in any civil proceedings in respect of any contravention, whether by act or omission, of any provision of this Division;
- (b) as conferring a defence to an action in any civil proceedings or as otherwise affecting a right of action in any civil proceedings; or
- (c) as affecting the extent (if any) to which the breach of a duty imposed by or under the associated occupational health and safety legislation is actionable.

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*DIVISION 2.—Occupational health and safety committees.***Establishment of occupational health and safety committees in workplaces.**

23. (1) An occupational health and safety committee shall be established at a place of work in accordance with this section if—

- (a) there are 20 or more persons employed at the place of work and a majority of the persons so employed requests the establishment of such a committee; or
- (b) the Council directs the establishment of such a committee at the place of work.

(2) The composition of any such occupational health and safety committee, the election or appointment of persons to the committee and any other matter relating to the establishment or procedure of the committee shall be as prescribed.

(3) The regulations made for the purposes of subsection (2) shall provide for—

- (a) the election of members of any such occupational health and safety committee by the persons who are employed at the place of work at which the committee is established and the appointment of other members of the committee by the employer of those persons; and
- (b) the election of a chairman and convener of the committee by and from the members so elected.

(4) A person shall not fail to do anything he is required to do pursuant to this section for the purposes of establishing an occupational health and safety committee at a place of work.

Penalty: \$5,000.

Functions of occupational health and safety committees.

24. (1) An occupational health and safety committee established at a place of work pursuant to section 23—

- (a) shall keep under review the measures taken to ensure the health and safety of persons at the place of work;

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- (b) shall investigate any matter at the place of work—
 - (i) which a member of the committee or a person employed thereat considers is not safe or is a risk to health; and
 - (ii) which has been brought to the attention of the employer;
- (c) shall attempt to resolve any such matter but, if unable to do so, shall request an inspector under the associated occupational health and safety legislation to undertake an inspection of the place of work for the purpose; and
- (d) shall have such other functions as are prescribed.

(2) An inspection by an inspector to resolve a matter pursuant to subsection (1) (c) shall be undertaken forthwith after the request made by the occupational health and safety committee.

Powers of members of occupational health and safety committees.

25. (1) A member of an occupational health and safety committee established at a place of work pursuant to section 23 shall, for the purposes of the committee, have power—

- (a) to carry out such inspections of the place of work;
- (b) to obtain such information relating to the place of work; or
- (c) to do such other things in relation to the place of work,

as may be prescribed.

(2) A member of any such occupational health and safety committee shall be provided with training to assist him to exercise his functions as such a member, being training of such kind and provided by such persons as may be prescribed.

Unlawful dismissal, etc., of employee.

26. (1) An employer shall not dismiss an employee or injure him in his employment or alter his position to his detriment by reason of the fact that the employee—

- (a) makes a complaint about a matter which he considers is not safe or is a risk to health;
- (b) is a member of an occupational health and safety committee established pursuant to section 23; or
- (c) exercise any of his functions as such a member.

Penalty: \$5,000.

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(2) In proceedings for an offence under subsection (1), if all the facts constituting the offence other than the reason for the defendant's action are proved, the onus of proving that the dismissal, injury or alteration was not actuated by the reason alleged in the charge shall lie on the defendant.

(3) Where an employer is convicted by a court of an offence under subsection (1), the court may order—

- (a) the employer to pay the employee a specified sum by way of reimbursement for the salary or wages lost by the employee; and
- (b) that the employee be reinstated in his old or a similar position.

(4) An employer shall give effect to an order of the court under subsection (3).

Penalty: For each day the order is not given effect to, \$100.

DIVISION 3.—*Notification of accidents and other matters.*

Notification of accidents and other matters.

27. (1) Where—

- (a) an accident occurs at a place of work, whether or not it causes the death of, or bodily injury to, any person; or
- (b) any other matter occurs at or in relation to a place of work which affects the health or safety of any person,

being an accident or other matter which is required by the regulations to be notified under this section—

- (c) except as provided by paragraph (d), the occupier of the place of work; or
- (d) such other person as is prescribed,

shall give notice of the accident or other matter in accordance with subsection (2).

Penalty: \$5,000.

(2) A notice of an accident or other matter referred to in subsection (1) shall be given to such persons, within such time and in such manner as are prescribed.

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Notification under associated occupational health and safety legislation.

28. A provision of the associated occupational health and safety legislation which requires notice to be given of an accident or other matter shall, if the regulations so provide, not have any effect.

DIVISION 4.—*Inspection.***Power of members of Council to enter workplace.**

29. For the purposes of this Act, a member of the Council may at any reasonable time enter and inspect any non-domestic premises which are a place of work.

Power of inspectors to inspect additional workplaces.

30. An inspector under the Factories, Shops and Industries Act, 1962, may exercise his powers of entry, inspection and examination of any factory or shop under section 73 of that Act in relation to any non-domestic premises which are a place of work and which are not a mine within the meaning of the Mines Inspection Act, 1901, or the Coal Mines Regulation Act, 1982.

Power of employees' representative to accompany inspector.

31. An inspector under the associated occupational health and safety legislation who is undertaking an inspection of a place of work with respect to a matter that may affect the health, safety or welfare of persons employed at the place of work—

- (a) shall, so far as practicable, consult a representative of—
 - (i) the persons so employed; or
 - (ii) an industrial union of employees registered under the Industrial Arbitration Act, 1940, whose members are engaged at the place of work; and
 - (b) shall, if requested to do so by such a representative, take the representative with him during any such inspection.
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PART IV.

ASSOCIATED OCCUPATIONAL HEALTH AND SAFETY LEGISLATION.

DIVISION 1.—*Preliminary.*

Saving.

32. Subject to this Division, the provisions of the associated occupational health and safety legislation shall be observed in addition to the provisions of this Act and the regulations.

This Act to prevail.

33. (1) Except as provided by subsection (2), where any provision of the associated occupational health and safety legislation is inconsistent with a provision of this Act or the regulations, the provision of this Act or the regulations shall prevail.

(2) A person is not guilty of an offence under Part III in respect of any act or omission which is expressly required or permitted to be done or omitted by or under the associated occupational health and safety legislation.

Double jeopardy.

34. Where an act or omission constitutes an offence—

(a) under this Act or the regulations; and

(b) under the associated occupational health and safety legislation,

the offender shall not be liable to be punished twice in respect of the offence.

DIVISION 2.—*Factories, shops and industries legislation.*

Factories, Shops and Industries Act, 1962.

35. The provisions of the Factories, Shops and Industries Act, 1962 (Parts IV–IX excepted), and the regulations and orders made thereunder shall, for the purposes of this Act, be associated occupational health and safety legislation.

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Amendments.

36. The Factories, Shops and Industries Act, 1962, is amended in the manner set forth in Schedule 2.

DIVISION 3.—*Construction safety legislation.***Construction Safety Act, 1912.**

37. The provisions of the Construction Safety Act, 1912, and the regulations made thereunder shall, for the purposes of this Act, be associated occupational health and safety legislation.

Amendments.

38. The Construction Safety Act, 1912, is amended in the manner set forth in Schedule 3.

DIVISION 4.—*Mining legislation.***Mines Inspection Act, 1901, etc.**

39. The provisions of the Mines Inspection Act, 1901, the Mines Rescue Act, 1925, and the Coal Mines Regulation Act, 1982, and the regulations and rules made thereunder shall, for the purposes of this Act, be associated occupational health and safety legislation.

Amendments.

40. (1) The Mines Inspection Act, 1901, is amended in the manner set forth in Schedule 4.

(2) The Coal Mines Regulation Act, 1982, is amended in the manner set forth in Schedule 5.

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DIVISION 5.—Dangerous goods legislation.

Dangerous Goods Act, 1975.

41. The provisions of the Dangerous Goods Act, 1975, and the regulations made thereunder shall, for the purposes of this Act, be associated occupational health and safety legislation.

Amendments.

42. The Dangerous Goods Act, 1975, is amended in the manner set forth in Schedule 6.

DIVISION 6.—Rural workers accommodation legislation.

Rural Workers Accommodation Act, 1969.

43. The provisions of the Rural Workers Accommodation Act, 1969, and the regulations made thereunder shall, for the purposes of this Act, be associated occupational health and safety legislation.

Amendments.

44. The Rural Workers Accommodation Act, 1969, is amended in the manner set forth in Schedule 7.

PART V.

REGULATIONS.

Regulations generally.

45. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to the objects of this Act.

(2) Without limiting the generality of subsection (1), the Governor may make regulations for or with respect to conferring power on inspectors under the associated occupational health and safety legislation—

(a) to require any contravention, or likely contravention, of this Act or the regulations to be remedied; and

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(b) to prohibit any activity at a place of work which is not safe or which is a risk to health.

(3) A provision of a regulation may—

(a) apply generally or be limited in its application by reference to specified exceptions or factors;

(b) apply differently according to different factors of a specified kind; or

(c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

(4) A regulation may impose a penalty not exceeding \$2,000 for any offence against a regulation.

Adaptation of Part III.

46. The regulations may adapt the provisions of Part III to meet the circumstances of any specified class of case.

PART VI.**OFFENCES.****Summary procedure for offences.**

47. (1) Proceedings for an offence against this Act or the regulations shall be disposed of summarily—

(a) before a court of petty sessions constituted by a stipendiary magistrate;

(b) before an industrial magistrate; or

(c) before the Supreme Court in its summary jurisdiction.

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(2) If proceedings for an offence against this Act or the regulations are brought before a court of petty sessions constituted by a stipendiary magistrate or before an industrial magistrate, the maximum penalty that the court of petty sessions or industrial magistrate may impose in respect of the offence is, notwithstanding any other provision of this Act, \$5,000 or the maximum penalty provided by this Act or the regulations in respect of the offence, whichever is the lesser.

(3) If proceedings for an offence against this Act or the regulations are brought before the Supreme Court in its summary jurisdiction, that Court may impose a penalty not exceeding the maximum penalty provided by this Act or the regulations in respect of the offence.

(4) The provisions of the Industrial Arbitration Act, 1940, and the regulations made under that Act, relating to proceedings before an industrial magistrate and to appeals from an industrial magistrate to the Industrial Commission of New South Wales apply to proceedings before an industrial magistrate for offences against this Act or the regulations as if the proceedings under this Act were proceedings under that Act.

(5) In proceedings for an offence against this Act or the regulations, the informant may conduct his case himself, or by a barrister or solicitor, by an agent authorised by him in writing, or by a public servant.

Authority to prosecute.

48. (1) Proceedings for an offence against this Act or the regulations shall not be instituted without the written consent of the Minister or a prescribed officer.

(2) In proceedings for an offence against this Act or the regulations, a consent to institute the proceedings, purporting to have been signed by the Minister or a prescribed officer, shall be evidence of that consent without proof of the signature of the Minister or prescribed officer, as the case may be.

Time for instituting proceedings for offences.

49. Notwithstanding anything in any other Act, proceedings for an offence against this Act or the regulations may be instituted within the period of 2 years after the act or omission alleged to constitute the offence.

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Offences by corporations.

50. (1) Where a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each director of the corporation, and each person concerned in the management of the corporation, shall be deemed to have contravened the same provision unless he satisfies the court that—

- (a) the corporation contravened the provision without his knowledge;
- (b) he was not in a position to influence the conduct of the corporation in relation to its contravention of the provision; or
- (c) he, being in such a position, used all due diligence to prevent the contravention by the corporation.

(2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or been convicted under that provision.

(3) Nothing in subsection (1) prejudices or affects any liability imposed by a provision of this Act or the regulations on any corporation by which an offence against the provision is actually committed.

Aiding and abetting, etc.

51. (1) A person who aids, abets, counsels or procures, or by act or omission is in any way directly or indirectly knowingly concerned in or a party to, the commission of an offence against this Act or the regulations shall be deemed to have committed that offence and is punishable accordingly.

(2) Subsection (1) does not apply to a person who is acting in the ordinary course of his duties as an officer of an industrial union of employees or employers.

Obstruction, etc.

52. A person shall not wilfully hinder or obstruct any person in the exercise of a power conferred by or under this Act.

Penalty: \$5,000.

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Defence.

53. It shall be a defence to any proceedings against a person for an offence against this Act or the regulations for the person to prove that—

- (a) it was not reasonably practicable for him to comply with the provision of this Act or the regulations the breach of which constituted the offence; or
- (b) the commission of the offence was due to causes over which he had no control and against the happening of which it was impracticable for him to make provision.

SCHEDULE 1.

(Sec. 9 (4).)

PROVISIONS RELATING TO THE MEMBERS AND PROCEDURE OF THE COUNCIL.

Interpretation: Sch. 1.

1. In this Schedule, "appointed member" means a member referred to in section 9 (1) (c), (d) or (e).

Deputies for members.

2. (1) The Minister may, from time to time, appoint a person to be the deputy of a member.

- (2) A person shall not be appointed under subclause (1) as the deputy of—
 - (a) a member referred to in section 9 (1) (a) or (b), unless he is an officer of the Department of Industrial Relations;
 - (b) a member referred to in section 9 (1) (c), unless he is appointed from the same panel from which the member was appointed or he is appointed from a further panel of 6 persons nominated by the Labor Council of New South Wales;
 - (c) a member referred to in section 9 (1) (d), unless he is appointed from the same panel from which the member was appointed or he is appointed from a further panel of 6 persons nominated by such bodies or organisations representing employers as are approved by the Minister; or
 - (d) the member referred to in section 9 (1) (e), unless he is appointed on the nomination of the Minister for Health.

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SCHEDULE 1—*continued.*PROVISIONS RELATING TO THE MEMBERS AND PROCEDURE OF THE COUNCIL—*continued.*

(3) Two or more persons may be appointed under subclause (1) as deputies from a single further panel of 6 persons referred to in subclause (2) (b) or (c).

(4) The deputy of a member under subclause (1) may, in the absence of the member, attend a meeting of the Council or a meeting of any committee to which the member has been appointed, and for the purposes of the meeting shall have all the functions of the member.

(5) The Minister may, for any cause which appears to him sufficient, remove a deputy from any office to which he was appointed under subclause (1).

(6) A deputy of an appointed member under subclause (1) is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of him.

(7) For the purposes of this clause, a vacancy in the office of a member shall be deemed to be an absence from office of the member.

Terms of office of appointed members.

3. (1) Subject to this Act, an appointed member shall be appointed for such term, not exceeding 5 years, as may be specified in the instrument appointing him.

(2) Upon the expiration of the term of office of an appointed member he shall, if otherwise qualified, be eligible for re-appointment from time to time.

Remuneration.

4. An appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of him.

Filling of vacancy in office of an appointed member.

5. In the event of the office of any appointed member becoming vacant a person shall, subject to this Act, be appointed to fill the vacancy.

Casual vacancies.

6. (1) An appointed member shall be deemed to have vacated his office if—
(a) he dies;

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SCHEDULE 1—*continued.*

PROVISIONS RELATING TO THE MEMBERS AND PROCEDURE OF THE COUNCIL—*continued.*

- (b) he absents himself from 4 consecutive meetings of the Council of which reasonable notice has been given to him personally or in the ordinary course of post, except on leave granted by the Minister (which leave the Minister is hereby authorised to grant) or unless, before the expiration of 4 weeks after the last of those meetings, he is excused by the Minister for his absence from those meetings;
- (c) he becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;
- (d) he becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act;
- (e) he is convicted in New South Wales of an offence which is punishable by imprisonment for 12 months or upwards, or he is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be an offence so punishable;
- (f) he resigns his office by writing under his hand addressed to the Minister; or
- (g) he is removed from office by the Minister under subclause (2).

(2) The Minister may, for any cause which appears to him sufficient, remove an appointed member from office.

Effect of certain other Acts.

7. (1) The provisions of the Public Service Act, 1979, do not apply to or in respect of the appointment of an appointed member and an appointed member is not, as a member, subject to that Act during his term of office as a member.

(2) Where by or under any other Act provision is made requiring the holder of an office specified therein to devote the whole of his time to the duties of his office, or prohibiting him from engaging in employment outside the duties of his office, that provision shall not operate to disqualify him from holding that office and also the office of a member or from accepting and retaining any remuneration payable to him under this Act as a member.

(3) The office of an appointed member shall for the purposes of any Act be deemed not to be an office or place of profit under the Crown.

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SCHEDULE 1—*continued.*PROVISIONS RELATING TO THE MEMBERS AND PROCEDURE OF THE COUNCIL—*continued.***Liability of members, etc.**

8. No matter or thing done by the Council, and no matter or thing done by any member or by any person acting under the direction of the Council shall, if the matter or thing was done bona fide for the purposes of executing this or any other Act, subject a member or a person so acting personally to any action, liability, claim or demand whatever.

General procedure.

9. The procedure for the calling of meetings of the Council and for the conduct of business at those meetings shall, subject to this Schedule, be as determined by the Council.

Convening of meetings.

10. (1) Meetings of the Council may be convened by the Chairman.

(2) The Chairman shall convene a meeting of the Council if requested to do so by any 2 members.

Quorum.

11. Five members shall form a quorum and any duly convened meeting of the Council at which a quorum is present shall be competent to transact any business of the Council and shall have and may exercise all the functions of the Council.

Presiding member.

12. (1) The Chairman or, in the absence of the Chairman, his deputy or, in the absence of both the Chairman and his deputy, another member elected as chairman for the meeting by the members present shall preside at a meeting of the Council.

(2) The person acting as chairman at any meeting of the Council shall have a deliberative vote and, in the event of an equality of votes, shall have a second or casting vote.

Voting.

13. A decision supported by a majority of the votes cast at a meeting of the Council at which a quorum is present shall be the decision of the Council.

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SCHEDULE 1—*continued.*

PROVISIONS RELATING TO THE MEMBERS AND PROCEDURE OF THE COUNCIL—*continued.*

Attendance by non-members.

14. A person authorised by the Council or Chairman to do so may attend a meeting of the Council for the purpose of assisting the Council to exercise its functions.

Transaction of business outside meetings.

15. (1) The Council may, if it thinks fit, transact any of its business by the circulation of papers, and a resolution in writing approved in writing by a majority of the members shall be as valid and effectual as if it had been passed at a meeting of the Council by the votes of the members approving the resolution.

(2) Where there is an equality of votes in respect of any business transacted under subclause (1), the Chairman shall have a second or casting vote as well as a deliberative vote.

Minutes.

16. The Council shall cause full and accurate minutes to be kept of the proceedings of each meeting of the Council.

First meeting of Council.

17. The Minister shall call the first meeting of the Council in such manner as he thinks fit.

SCHEDULE 2.

(Sec. 36.)

AMENDMENTS TO THE FACTORIES, SHOPS AND INDUSTRIES ACT, 1962.

(1) (a) Section 2—

From the matter relating to Part I, omit "6", insert instead "6A".

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SCHEDULE 2—*continued.*AMENDMENTS TO THE FACTORIES, SHOPS AND
INDUSTRIES ACT, 1962—*continued.*

(b) Section 2—

Omit the matter relating to Division 10 of Part III.

(c) Section 2—

From the matter relating to Division 14 of Part III, omit “70–72”, insert instead “70, 71”.

(2) Section 6A—

After section 6, insert:—

Part III to bind the Crown.

6A. The provisions of Part III (except Division 2) and the regulations made thereunder bind the Crown, not only in right of New South Wales but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

(3) Section 7 (5)—

Omit “one hundred dollars”, insert instead “\$2,000”.

(4) Section 11 (4) (b)—

Omit the paragraph, insert instead:—

- (b) the provisions of the Occupational Health and Safety Act, 1983, and the provisions of any other Act affecting or relating to the user of the premises; and

(5) Section 27 (4)—

Omit “and be liable to a penalty not exceeding \$1,500”.

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SCHEDULE 2—*continued.*

AMENDMENTS TO THE FACTORIES, SHOPS AND
INDUSTRIES ACT, 1962—*continued.*

- (6) Section 45 (2)—
Omit "\$500", insert instead "\$5,000".
- (7) (a) Section 48 (5) (a)—
Omit "and be liable to a penalty not exceeding \$500".
- (b) Section 48 (5) (b)—
Omit the paragraph.
- (8) Part III, Division 10—
Omit the Division.
- (9) (a) Section 68 (1) (b) (ii)—
Omit "employed;," insert instead "employed."
- (b) Section 68 (1) (c)—
Omit the paragraph.
- (10) (a) Section 69 (1) (a)—
Omit "of the Factory and Industrial Welfare Board constituted under this Act, or".
- (b) Section 69 (1) (a)—
Omit ", or where a recommendation is made to the Minister by the Factory and Industrial Welfare Board pursuant to subsection (1) of section 63 with respect to any factory".

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SCHEDULE 2—*continued.*AMENDMENTS TO THE FACTORIES, SHOPS AND
INDUSTRIES ACT, 1962—*continued.*

- (c) Section 69 (2)—
Omit the subsection.
- (11) Section 72—
Omit the section.
- (12) Section 73 (1) (e)—
After “thereunder”, insert “, or the Occupational Health and Safety Act, 1983”.
- (13) Section 144 (1) (e)—
Omit the paragraph, insert instead:—
(e) imposing a penalty for a contravention of the regulations—
(i) in the case of a regulation made under Part III—not exceeding \$2,000; or
(ii) in any other case—not exceeding \$500.
- (14) Section 145 (6)—
After section 145 (5), insert:—
(6) Notwithstanding anything in any other Act, proceedings for an offence against a provision of Part III or the regulations thereunder may be instituted within the period of 2 years after the act or omission alleged to constitute the offence.

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SCHEDULE 2—*continued.*

AMENDMENTS TO THE FACTORIES, SHOPS AND
INDUSTRIES ACT, 1962—*continued.*

(15) Section 147 (1)—

Omit the subsection, insert instead:—

(1) Any person who is guilty of an offence against this Act shall, where no other penalty is expressly provided, be liable—

- (a) in the case of an offence against any of the provisions of Part III—to a penalty not exceeding \$5,000; or
- (b) in any other case—to a penalty not exceeding \$500.

SCHEDULE 3.

(Sec. 38.)

AMENDMENTS TO THE CONSTRUCTION SAFETY ACT, 1912.

(1) Section 6 (2)—

Omit the subsection, insert instead:—

(2) A person who fails to comply with provisions of subsection (1) shall be guilty of an offence against this Act.

(2) Section 6A (2)—

Omit “liable to a penalty not exceeding \$1,000”, insert instead “guilty of an offence against this Act”.

(3) Section 10 (2)—

Omit the subsection, insert instead:—

(2) A person who fails to comply with the provisions of subsection (1) shall be guilty of an offence against this Act.

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SCHEDULE 3—*continued.*AMENDMENTS TO THE CONSTRUCTION SAFETY ACT, 1912—*continued.*

(4) (a) Section 14 (1)—

Omit “liable to a penalty not exceeding \$500”, insert instead “guilty of an offence against this Act”.

(b) Section 14 (2)—

Omit “liable to a penalty not exceeding \$1,000”, insert instead “guilty of an offence against this Act”.

(5) Section 15 (5)—

Omit “liable to a penalty not exceeding \$1,000”, insert instead “guilty of an offence against this Act”.

(6) Section 16—

Omit “liable to a penalty not exceeding \$1,000”, insert instead “guilty of an offence against this Act and liable to a penalty not exceeding \$2,000”.

(7) Section 17B (2)—

Omit “liable to a penalty not exceeding \$100”, insert instead “guilty of an offence against this Act and liable to a penalty not exceeding \$500”.

(8) (a) Section 18 (3)—

Omit “liable to a penalty not exceeding \$500”, insert instead “guilty of an offence against this Act”.

(b) Section 18 (4)—

Omit the subsection.

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SCHEDULE 3—*continued.*

AMENDMENTS TO THE CONSTRUCTION SAFETY ACT, 1912—*continued.*

(9) (a) Section 21 (1)—

Omit "\$1,000", insert instead "\$5,000".

(b) Section 21 (4)—

After section 21 (3), insert:—

(4) Notwithstanding anything in any other Act, proceedings for an offence against this Act or the regulations may be instituted within the period of 2 years after the act or omission alleged to constitute the offence.

(10) Section 22 (4)—

Omit "\$500", insert instead "\$2,000".

SCHEDULE 4.

(Sec. 40 (1).)

AMENDMENTS TO THE MINES INSPECTION ACT, 1901.

(1) Section 2—

From the matter relating to Part I, omit "4B", insert instead "4C".

(2) Section 4C—

After section 4B, insert:—

Act to bind the Crown.

4c. This Act binds the Crown, not only in right of New South Wales but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

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SCHEDULE 4—*continued.*AMENDMENTS TO THE MINES INSPECTION ACT, 1901—*continued.*

- (3) Section 42 (3)—
Omit “six months”, insert instead “2 years”.
- (4) (a) Section 69 (4)—
Omit “six months”, insert instead “2 years”.
- (b) Section 69 (5)—
After section 69 (4), insert:—
(5) Notwithstanding anything in any other Act, proceedings before a court of petty sessions in respect of an offence against this Act (except section 42) may be instituted within the period of 2 years after the act or omission alleged to constitute the offence.

SCHEDULE 5.

(Sec. 40 (2).)

AMENDMENTS TO THE COAL MINES REGULATION ACT, 1982.

- (1) (a) Section 157 (1)—
Omit “subsections (2) and (3)”, insert instead “subsection (2)”.
- (b) Section 157 (1)—
Omit “6 months”, insert instead “2 years”.
- (2) Section 157 (2)—
Omit “6 months”, insert instead “2 years”.
- (3) Section 157 (3)—
Omit the subsection.
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SCHEDULE 6.

(Sec. 42).

AMENDMENTS TO THE DANGEROUS GOODS ACT, 1975.

(1) Section 3—

From the matter relating to Part I, omit “5”, insert instead “5A”.

(2) Section 5 (3)—

Omit “or the Radioactive Substances Act, 1957”, insert instead “the Radioactive Substances Act, 1957, or the Occupational Health and Safety Act, 1983”.

(3) Section 5A—

After section 5, insert:—

Act to bind the Crown.

5A. This Act binds the Crown, not only in right of New South Wales but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

(4) Section 33 (3)—

Omit the subsection, insert instead:—

(3) Notwithstanding anything in any other Act, proceedings for any such offence may be instituted within the period of 2 years after the act or omission alleged to constitute the offence.

(5) (a) Section 41 (2)—

Omit “and the Radioactive Substances Act, 1957”, insert instead “the Radioactive Substances Act, 1957, and the Occupational Health and Safety Act, 1983”.

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SCHEDULE 6—*continued.*AMENDMENTS TO THE DANGEROUS GOODS ACT, 1975—*continued.*

(b) Section 41 (3) (f)—

Omit “and”.

(c) Section 41 (3) (f1)—

After section 41 (3) (f), insert:—

(f1) exempt the Crown, either absolutely or subject to conditions, from any provisions of this Act or provide for the grant to the Crown of absolute or conditional exemption from any provisions of this Act by a prescribed person, or class of persons, or both; and

SCHEDULE 7.

(Sec. 44.)

AMENDMENTS TO THE RURAL WORKERS ACCOMMODATION ACT, 1969.

(1) Section 4A—

After section 4, insert:—

Act to bind the Crown.

4A. This Act binds the Crown, not only in right of New South Wales but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

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SCHEDULE 7—*continued.*

AMENDMENTS TO THE RURAL WORKERS ACCOMMODATION ACT, 1969—
continued.

(2) Section 17 (5)—

After section 17 (4), insert:—

(5) Notwithstanding anything in any other Act, proceedings for an offence against this Act or the regulations may be instituted within the period of 2 years after the act or omission alleged to constitute the offence.
