

# Occupational Health and Safety Act 2000 No 40

[2000-40]



New South Wales

## Status Information

### Currency of version

Historical version for 1 December 2006 to 3 December 2006 (accessed 26 May 2024 at 13:05)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**
  - [Coal Mine Health and Safety Act 2002 No 129](#) (amended by [Mine Health and Safety Act 2004 No 74](#)) (not commenced)
  - [Mine Health and Safety Act 2004 No 74](#) (not commenced)
- **See also**
  - [Statute Law \(Miscellaneous Provisions\) Bill \(No 2\) 2006](#)

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 1 December 2006

# Occupational Health and Safety Act 2000 No 40



New South Wales

## Contents

<b>Long title</b> .....	9
<b>Part 1 Preliminary</b> .....	9
1 Name of Act .....	9
2 Commencement .....	9
3 Objects .....	9
4 Definitions .....	10
5 Application of Act .....	12
6 When employees and self-employed persons at work .....	12
7 Risks arising from activities at work .....	12
<b>Part 2 Duties relating to health, safety and welfare at work</b> .....	12
<b>Division 1 General duties</b> .....	12
8 Duties of employers .....	12
9 Duties of self-employed persons .....	13
10 Duties of controllers of work premises, plant or substances .....	13
11 Duties of designers, manufacturers and suppliers of plant and substances for use at work .....	14
12 Penalty for offence against this Division .....	14
<b>Division 2 Duty to consult</b> .....	15
13 Duty of employer to consult .....	15
14 Nature of consultation .....	15
15 When consultation is required .....	16
16 How consultation to be undertaken .....	16

17 Establishment of OHS committees, election of OHS representatives or other agreed arrangements .....	16
18 Functions of OHS committees and OHS representatives .....	17
19 Regulations with respect to consultation .....	17
<b>Division 3 Related duties</b> .....	18
20 Duties of employees .....	18
21 Person not to interfere with or misuse things provided for health, safety and welfare .....	18
22 Employer not to charge employees for things done or provided pursuant to statutory requirement .....	18
23 Unlawful dismissal or other victimisation of employee .....	19
23A Application for reinstatement of employee unlawfully dismissed under section 23 .....	19
24 Person not to hinder aid to injured worker etc .....	21
25 Person not to disrupt workplace by creating health or safety fears .....	21
<b>Division 4 Ancillary provisions</b> .....	22
26 Offences by corporations—liability of directors and managers .....	22
27 Aiding and abetting etc .....	22
28 Defence .....	22
29 Relationship between duties under this Part and regulations .....	23
30 Alternative verdicts .....	23
31 Multiple contraventions of general duties under Division 1 .....	23
32 Civil liability not affected by this Part .....	23
<b>Part 2A Workplace deaths—offence</b> .....	24
32A Reckless conduct causing death at workplace by person with OHS duties .....	24
32B Prosecution for offences under this Part .....	25
<b>Part 3 Regulations</b> .....	25
33 Regulations: general power .....	25
34 Regulations: specific miscellaneous powers .....	26
35 Regulations: specific powers with respect to licences, certificates of competency, registration and other authorities .....	27
36 Regulations may prescribe decisions that are to be reviewable by Administrative Decisions Tribunal .....	27

37 Regulations: adapting duties under Part 2.....	27
38 Regulations may adopt other publications .....	27
39 Regulations may create criminal offences .....	28
39A Civil liability under regulations .....	28
<b>Part 4 Industry codes of practice .....</b>	<b>28</b>
40 Purpose of industry codes of practice.....	28
41 WorkCover may prepare draft codes .....	28
42 Consultation on draft codes.....	28
43 Approval of codes by Minister .....	28
44 Publication, commencement and availability of codes .....	29
45 Amendment or revocation of codes.....	29
46 Use of codes .....	29
<b>Part 5 Investigations .....</b>	<b>30</b>
<b>Division 1 Appointment of inspectors .....</b>	<b>30</b>
47 Appointment of inspectors (otherwise than in connection with mines) .....	30
47A Appointment of inspectors in connection with mines .....	30
48 Identification of inspectors .....	30
<b>Division 2 Powers of inspectors .....</b>	<b>31</b>
Note.....	31
49 (Repealed) .....	31
50 Powers of entry for places of work.....	31
51 Notice of entry.....	31
52 Production of authority to enter premises .....	31
53 Time for entry into premises .....	32
54 Use of force on entry .....	32
55 Notification of use of force on entry .....	32
56 Compensation .....	32
57 Entry to premises used for residential purposes .....	33
58 Search warrant .....	33
59 General powers available on entry .....	33
60 Powers available on entry to dismantle, take and keep things.....	34

61 Care to be taken .....	34
62 Power of inspectors to obtain information, documents and evidence .....	34
63 Power of inspector to demand name and address .....	35
64 Attendance of inspector at coronial inquest .....	36
65 Protection from incrimination .....	36
66 Offence: compliance .....	37
67 Offence of impersonating an inspector .....	37
68 Inspector may request assistance .....	37
69 Power of employees' representative to accompany inspector .....	37
70 Notice of taking or dismantling plant, substances or other things .....	38
71 Powers supporting taking of things .....	38
72 Receipt for things taken .....	39
73 Forfeiture of things taken .....	39
74 Return of things taken .....	40
75 Access to things taken .....	40

### **Division 3 Entry and inspection powers of authorised employees' representatives**

.....	40
76 Definition .....	40
77 Powers of entry of places of work .....	41
78 Notice of entry .....	41
79 Authority to enter premises .....	41
80 Entry to premises used for residential purposes .....	41
81 Powers available on entry .....	42
82 Care to be taken .....	42
83 Authorised representative may request assistance from inspector .....	42
84 Offence of failing to comply with requirement of authorised representative .....	42
85 Offence of impersonating an authorised representative .....	42

### **Division 4 Incidents at places of work** .....

86 Notification of incidents .....	42
87 Non-disturbance of plant involved in serious incidents (and of surrounding area) .....	43
88 Minister may require and publish special reports into incidents .....	44

<b>Part 6 Investigation, improvement and prohibition notices</b> .....	45
<b>Division 1 Investigation notices</b> .....	45
89 Investigation notice to stop plant or prevent disturbance of premises to allow investigation .....	45
90 Offence: failure to comply with investigation notice.....	45
<b>Division 2 Improvement notices</b> .....	46
91 Issue of improvement notices.....	46
92 Offence: failure to comply with improvement notice.....	46
<b>Division 3 Prohibition notices</b> .....	47
93 Issue of prohibition notices.....	47
94 Offence: failure to comply with prohibition notice.....	47
<b>Division 4 General provisions relating to notices</b> .....	48
95 Notices may include directions.....	48
96 Review of notices by WorkCover.....	48
97 Appeal to Industrial Magistrate following review .....	49
98 Application to Industrial Magistrate for stay of investigation or prohibition notice.....	49
99 Withdrawal of notices .....	49
100 Revocation or withdrawal of notice does not prevent issue of another notice.....	49
101 Service of notices .....	50
102 Exhibition of notices .....	50
103 Proceedings for offences not affected by notices .....	50
104 (Repealed) .....	50
<b>Part 7 Criminal and other proceedings</b> .....	50
<b>Division 1 Proceedings for offences generally</b> .....	50
105 Summary procedure for offences .....	50
106 Authority to prosecute.....	51
107 Time for instituting proceedings for offences .....	51
107A Time for instituting proceedings—special provision for work incident notification .....	52
108 Penalty notices for certain offences.....	53
109 Evidentiary statements .....	54

110 Onus of proof concerning reasonable excuse .....	54
<b>Division 2 Court orders in connection with offences</b> .....	<b>54</b>
111 Operation of Division .....	54
112 Orders generally .....	55
113 Orders for restoration .....	55
114 Orders regarding costs and expenses of investigation .....	55
115 Orders to publicise or notify offence.....	56
116 Orders to undertake OHS projects .....	56
117 Offence: failure to comply with order .....	56
<b>Division 3 Proceedings against the Crown and government agencies</b> .....	<b>57</b>
118 Act to bind Crown .....	57
119 Criminal proceedings against the Crown and agents of the Crown .....	57
120 Responsible agency for the purposes of proceedings against the Crown .....	57
121 Penalties in respect of proceedings against the Crown .....	58
122 Investigation, improvement or prohibition notices in connection with the Crown .....	58
123 Proceedings against successors of government corporations .....	59
<b>Division 4 Sentencing guidelines</b> .....	<b>59</b>
124 Definitions .....	59
125 Guideline judgments on application of Attorney General .....	60
126 Peak councils may intervene .....	60
127 Full Bench may give persons or organisations leave to appear .....	61
128 Alteration of guideline judgments .....	61
129 Discretion of Full Bench preserved .....	61
130 Rules of Industrial Relations Commission .....	61
131 Use of evidence in giving guideline judgments .....	61
<b>Part 8 Miscellaneous</b> .....	<b>62</b>
132 Application of associated occupational health and safety legislation .....	62
133 Application of Act to mines: references to WorkCover .....	62
134 Application of Act to police officers .....	62
135 Plant affecting public safety—extension of Act.....	62
135A Dangerous goods—extension of Act.....	63

136 Offence of obstructing or intimidating inspectors and others exercising functions under Act.....	64
137 Disclosure of information by inspectors and others.....	65
137A Delegation of functions in relation to mines by Minister .....	65
138 Notes .....	66
139 Repeals.....	66
140 (Repealed) .....	66
141 Savings, transitional and other provisions.....	66
142 Review of Act.....	66
<b>Schedule 1 Repeals</b> .....	<b>67</b>
<b>Schedule 2 (Repealed)</b> .....	<b>67</b>
<b>Schedule 3 Savings, transitional and other provisions</b> .....	<b>67</b>



# Occupational Health and Safety Act 2000 No 40



New South Wales

An Act to secure the health, safety and welfare of persons at work; to repeal the *Occupational Health and Safety Act 1983*; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Occupational Health and Safety Act 2000*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Objects

The objects of this Act are as follows:

- (a) to secure and promote the health, safety and welfare of people at work,
- (b) to protect people at a place of work against risks to health or safety arising out of the activities of persons at work,
- (c) to promote a safe and healthy work environment for people at work that protects them from injury and illness and that is adapted to their physiological and psychological needs,
- (d) to provide for consultation and co-operation between employers and employees in achieving the objects of this Act,
- (e) to ensure that risks to health and safety at a place of work are identified, assessed and eliminated or controlled,
- (f) to develop and promote community awareness of occupational health and safety issues,
- (g) to provide a legislative framework that allows for progressively higher standards of occupational health and safety to take account of changes in technology and work practices,

- (h) to deal with the impact of particular classes or types of dangerous goods and plant at, and beyond, places of work.

#### 4 Definitions

In this Act:

**associated occupational health and safety legislation** means the following Acts and the regulations and rules made under them:

- (a) *Coal Mines Regulation Act 1982*,
- (b) (Repealed)
- (c) *Mines Inspection Act 1901*.
- (d) (Repealed)

**Note—**

See section 132 for provisions with respect to the application of the above associated legislation.

**employee** means an individual who works under a contract of employment or apprenticeship.

**employer** means a person who employs persons under contracts of employment or apprenticeship.

**exercise** a function includes perform a duty.

**function** includes a power, authority or duty.

**improvement notice** means an improvement notice issued under Part 6.

**industrial organisation of employees** means an industrial organisation of employees registered, or taken to be registered, under Chapter 5 of the *Industrial Relations Act 1996*.

**industry code of practice**—see Part 4.

**inspector** means an inspector appointed under Division 1 of Part 5.

**investigation notice** means an investigation notice issued under Part 6.

**mine** means a mine within the meaning of the *Mines Inspection Act 1901* or the *Coal Mines Regulation Act 1982* but, despite the definition of **mine** in the latter Act, does include a coal preparation plant that is a declared plant under Part 5A of that Act.

**occupational health and safety legislation** includes:

- (a) the provisions of this Act and the regulations, and

(b) the associated occupational health and safety legislation.

**occupier** of premises includes:

- (a) a person who, for the time being, has (or appears to have) the charge, management or control of the premises, or
- (b) a person who, for the time being, is in charge (or appears to be in charge) of any operation being conducted on the premises.

**OHS committee** and **OHS representative**—see section 16.

**place of work** means premises where persons work.

**plant** includes any machinery, equipment or appliance.

**plant affecting public safety**—see section 135.

**premises** includes any place, and in particular includes:

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

**previous offender**, in relation to the maximum penalty for an offence, means a person who has, at any time before being sentenced for that offence, been convicted of any other offence of any kind against this Act or the [Occupational Health and Safety Act 1983](#).

**prohibition notice** means a prohibition notice issued under Part 6.

**self-employed person** means a person who works for gain or reward otherwise than under a contract of employment or apprenticeship, whether or not employing 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.

**WorkCover** means the WorkCover Authority constituted by the [Workplace Injury Management and Workers Compensation Act 1998](#).

**Note—**

Words and expressions used in this Act that are defined in the [Interpretation Act 1987](#) have the meanings set out in that Act.

## 5 Application of Act

This Act applies to all places of work, except as otherwise provided by this Act.

### Note—

- 1 Section 86 (Notification of accidents and other matters) and section 87 (Non-disturbance of plant etc) do not apply to mines.
- 2 This Act applies to the Crown—see section 118.
- 3 This Act applies to prescribed plant affecting public safety even if it is not at a place of work or for use at work—see section 135.

## 6 When employees and self-employed persons at work

For the purposes of this Act:

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

## 7 Risks arising from activities at work

For the purposes of this Act, **risks** arising out of the activities of persons at work include risks attributable to:

- (a) the manner of conducting an undertaking, or
- (b) the plant or substances used for the purposes of an undertaking, or
- (c) the condition of premises (or any part of premises) used for the purposes of an undertaking.

# Part 2 Duties relating to health, safety and welfare at work

## Division 1 General duties

### 8 Duties of employers

- (1) **Employees** An employer must ensure the health, safety and welfare at work of all the employees of the employer.

That duty extends (without limitation) to the following:

- (a) ensuring that any premises controlled by the employer where the employees work (and the means of access to or exit from the premises) are safe and without risks to health,
- (b) ensuring that any plant or substance provided for use by the employees at work is safe and without risks to health when properly used,

- (c) ensuring that systems of work and the working environment of the employees are safe and without risks to health,
- (d) providing such information, instruction, training and supervision as may be necessary to ensure the employees' health and safety at work,
- (e) providing adequate facilities for the welfare of the employees at work.

(2) **Others at workplace** An employer must ensure that people (other than the employees of the employer) are not exposed to risks to their health or safety arising from the conduct of the employer's undertaking while they are at the employer's place of work.

**Note—**

See section 12 for the penalty for an offence against this section and other provisions of this Division. Division 4 makes ancillary provision with respect to those offences, including:

- (a) section 26—liability of directors and managers of corporations,
- (b) section 28—defence that compliance not reasonably practicable etc.

See also Division 2 for duty of employer to consult employees.

## **9 Duties of self-employed persons**

A self-employed person must ensure that people (other than the employees of the person) are not exposed to risks to their health or safety arising from the conduct of the person's undertaking while they are at the person's place of work.

## **10 Duties of controllers of work premises, plant or substances**

- (1) A person who has control of premises used by people as a place of work must ensure that the premises are safe and without risks to health.
- (2) A person who has control of any plant or substance used by people at work must ensure that the plant or substance is safe and without risks to health when properly used.
- (3) The duties of a person under this section:
  - (a) do not apply to premises, plant or substances used only by employees of the person, and
  - (b) do not apply to premises occupied only as a private dwelling or to plant or substances used in any such premises, and
  - (c) extend to the means of access to or exit from a place of work, and
  - (d) apply only if the premises, plant or substances are controlled in the course of a trade, business or other undertaking (whether for profit or not) of the person.

- (4) In this section, a person who has control of premises, plant or substances includes:
- (a) a person who has only limited control of the premises, plant or substances (in which case any duty under this section applies only to the matters over which the person has control), and
  - (b) a person who has, under any contract or lease, an obligation to maintain or repair the premises, plant or substances (in which case any duty under this section applies only to the matters covered by the contract or lease).

### **11 Duties of designers, manufacturers and suppliers of plant and substances for use at work**

- (1) A person who designs, manufactures or supplies any plant or substance for use by people at work must:
- (a) ensure that the plant or substance is safe and without risks to health when properly used, and
  - (b) provide, or arrange for the provision of, adequate information about the plant or substance to the persons to whom it is supplied to ensure its safe use.
- (2) The duties under this section:
- (a) apply only if the plant or substance is designed, manufactured or supplied in the course of a trade, business or other undertaking (whether for profit or not), and
  - (b) apply whether or not the plant or substance is exclusively designed, manufactured or supplied for use by people at work, and
  - (c) extend to the design, manufacture or supply of components for, or accessories to, any plant for use by people at work, and
  - (d) extend to the supply of the plant or substance by way of sale, transfer, lease or hire and whether as principal or agent, and
  - (e) extend to the supply of the plant or substance to a person for the purpose of supply to others, and
  - (f) do not apply to a person merely because the person supplies the plant or substance in the course of a business of financing the acquisition of the plant or substance by a customer from another person.
- (3) In this section, **manufacture** plant includes assemble, install or erect plant.

### **12 Penalty for offence against this Division**

A person who contravenes, whether by act or omission, a provision of this Division is guilty of an offence against that provision and is liable to the following maximum penalty:

- (a) in the case of a corporation (being a previous offender)—7,500 penalty units, or
- (b) in the case of a corporation (not being a previous offender)—5,000 penalty units, or
- (c) in the case of an individual (being a previous offender)—750 penalty units or imprisonment for 2 years, or both, or
- (d) in the case of an individual (not being a previous offender)—500 penalty units.

**Note—**

Section 17 of the *Crimes (Sentencing Procedure) Act 1999* provides, at the enactment of this Act, that the value of a penalty unit is \$110. Accordingly, the above maximum penalties are as follows:

- (a) in the case of a corporation (being a previous offender)—\$825,000, or
- (b) in the case of a corporation (not being a previous offender)—\$550,000, or
- (c) in the case of an individual (being a previous offender)—\$82,500 or imprisonment for 2 years, or both, or
- (d) in the case of an individual (not being a previous offender)—\$55,000.

## **Division 2 Duty to consult**

### **13 Duty of employer to consult**

An employer must consult, in accordance with this Division, with the employees of the employer to enable the employees to contribute to the making of decisions affecting their health, safety and welfare at work.

Maximum penalty:

- (a) in the case of a corporation (being a previous offender)—750 penalty units, or
- (b) in the case of a corporation (not being a previous offender)—500 penalty units, or
- (c) in the case of an individual (being a previous offender)—375 penalty units, or
- (d) in the case of an individual (not being a previous offender)—250 penalty units.

### **14 Nature of consultation**

Consultation under this Division requires:

- (a) the sharing of relevant information about occupational health, safety and welfare with employees, and
- (b) that employees be given the opportunity to express their views and to contribute in a timely fashion to the resolution of occupational health, safety and welfare issues at their place of work, and
- (c) that the views of employees are valued and taken into account by the employer.

## 15 When consultation is required

Consultation under this Division is required:

- (a) when risks to health and safety arising from work are assessed or when the assessment of those risks is reviewed, and
- (b) when decisions are made about the measures to be taken to eliminate or control those risks, and
- (c) when introducing or altering the procedures for monitoring those risks (including health surveillance procedures), and
- (d) when decisions are made about the adequacy of facilities for the welfare of employees, and
- (e) when changes that may affect health, safety or welfare are proposed to the premises where persons work, to the systems or methods of work or to the plant or substances used for work, and
- (f) when decisions are made about the procedures for consultation under this Division, and
- (g) in any other case prescribed by the regulations.

## 16 How consultation to be undertaken

Consultation under this Division may be undertaken by any one or more of the following means:

- (a) consultation may be undertaken with an occupational health and safety committee or committees established by the employer and employees for the place of work or the employer's undertaking (an **OHS committee**),
- (b) consultation may be undertaken with an occupational health and safety representative or representatives elected by the employees to represent them (an **OHS representative**),
- (c) consultation may be undertaken in accordance with other arrangements agreed by the employer and the employees.

## 17 Establishment of OHS committees, election of OHS representatives or other agreed arrangements

- (1) **OHS committees** An OHS committee is to be established for the purposes of consultation under this Division if the employer employs 20 or more persons in the employer's undertaking and a majority of those employees request the establishment of the committee or if WorkCover so directs. More than one committee is to be established if a majority of those employees request their establishment and the



employer agrees or if WorkCover so directs.

- (2) **OHS representatives** An OHS representative is to be elected for the purposes of consultation under this Division if at least one of the persons employed by the employer requests the election of the representative or if WorkCover so directs. The employees may elect more than one OHS representative if the employer agrees or if WorkCover so directs.
- (3) **Other agreed arrangements** Other agreed arrangements for consultation with employees are to be made in accordance with any requirements of the regulations. A Federal or State industrial organisation of employees may represent, for the purposes of consultation under the agreed arrangements, any of those employees who request the organisation to represent them.
- (4) **General** The employer may make arrangements for the establishment of an OHS committee or the election of an OHS representative whether or not it has been requested by any of the employees of the employer.
- (5) An OHS representative may also be appointed to an OHS committee.

## **18 Functions of OHS committees and OHS representatives**

An OHS committee or an OHS representative has the following functions:

- (a) to keep under review the measures taken to ensure the health, safety and welfare of persons at the place of work,
- (b) to investigate any matter that may be a risk to health and safety at the place of work,
- (c) to attempt to resolve the matter but, if unable to do so, to request an investigation by an inspector for that purpose,
- (d) such other functions as are prescribed by the regulations.

### **Note—**

See section 69 for power of employees' representative to accompany an inspector on an inspection of a place of work. See section 137 for offence of unauthorised disclosure of confidential information by any member of a committee or representative.

## **19 Regulations with respect to consultation**

The regulations may make further provisions with respect to consultation under this Division and, in particular, for or with respect to:

- (a) negotiations between employers and employees (or persons acting on their behalf) with respect to consultation arrangements, and
- (b) the establishment, composition, procedure and functions of OHS committees, and

- (c) the election and functions of OHS representatives, and
- (d) the powers of members of OHS committees and of OHS representatives with respect to inspections of the place of work and the obtaining of information relating to the place of work and other things in relation to the place of work, and
- (e) the training of members of OHS committees and of OHS representatives.

## **Division 3 Related duties**

### **20 Duties of employees**

- (1) An employee must, while at work, take reasonable care for the health and safety of people who are at the employee's place of work and who may be affected by the employee's acts or omissions at work.
- (2) An employee must, while at work, co-operate with his or her employer or other person so far as is necessary to enable compliance with any requirement under this Act or the regulations that is imposed in the interests of health, safety and welfare on the employer or any other person.

Maximum penalty:

- (a) in the case of a previous offender—45 penalty units, or
- (b) in any other case—30 penalty units.

### **21 Person not to interfere with or misuse things provided for health, safety and welfare**

A person must not, intentionally or recklessly, interfere with or misuse anything provided in the interests of health, safety and welfare under occupational health and safety legislation.

Maximum penalty:

- (a) in the case of a previous offender—45 penalty units, or
- (b) in any other case—30 penalty units.

### **22 Employer not to charge employees for things done or provided pursuant to statutory requirement**

An employer must not impose a charge on an employee, or permit a charge to be imposed on an employee, for anything done or provided in pursuance of a specific requirement of this Act or the regulations.

Maximum penalty:

- (a) in the case of a corporation (being a previous offender)—3,750 penalty units, or

- (b) in the case of a corporation (not being a previous offender)—2,500 penalty units, or
- (c) in the case of an individual (being a previous offender)—375 penalty units, or
- (d) in the case of an individual (not being a previous offender)—250 penalty units.

### **23 Unlawful dismissal or other victimisation of employee**

- (1) An employer must not dismiss an employee, injure an employee in his or her employment or alter an employee's position to his or her detriment because the employee:
  - (a) makes a complaint about a workplace matter that the employee considers is not safe or is a risk to health, or
  - (b) is a member of an OHS committee or an OHS representative, or
  - (c) exercises any functions conferred on the employee under Division 2 (whether as such a member or representative or otherwise).

Maximum penalty:

- (a) in the case of a corporation (being a previous offender)—375 penalty units, or
  - (b) in the case of a corporation (not being a previous offender)—250 penalty units, or
  - (c) in the case of an individual (being a previous offender)—225 penalty units, or
  - (d) in the case of an individual (not being a previous offender)—150 penalty units.
- (2) In proceedings for an offence against this section, 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 lies on the defendant.

#### **Note—**

See section 23A of this Act and sections 210 (j) and 213 of the [Industrial Relations Act 1996](#) for remedies (such as reinstatement or reimbursement) arising from a breach of this section.

### **23A Application for reinstatement of employee unlawfully dismissed under section 23**

- (1) In this section:

**reinstatement** includes re-employment.

**unlawful dismissal** means the dismissal of an employee in contravention of section 23.

- (2) An employee who has been unlawfully dismissed may, within 21 days after the dismissal, apply to the Industrial Court of NSW for reinstatement. The Court may

accept an application that is made out of time if it considers that there is a sufficient reason to do so.

- (3) An industrial organisation of employees may make such an application on behalf of the employee.
- (4) The Industrial Court of NSW may, on such an application, order the employer to reinstate the employee in accordance with the terms of the order.
- (5) If the Industrial Court of NSW is satisfied that the applicant was unlawfully dismissed:
  - (a) the Court is to order the employee to be reinstated in his or her former employment or in any other employment that is no less advantageous to the employee, except as provided by paragraph (b), or
  - (b) if the employer satisfies the Court that it would be impracticable to reinstate the employee—the Court may order the employer to pay to the employee an amount of compensation determined by the Court to be appropriate in the circumstances (but not exceeding the amount of remuneration the employee would have received but for the dismissal in the period of 6 months following the dismissal).
- (6) If the Industrial Court of NSW orders reinstatement under this section, it may order that the period of employment of the applicant with the employer is taken not to have been broken by the dismissal.
- (7) An application under this section may be made regardless of whether the employer has been convicted of an offence against section 23.
- (8) The Industrial Court of NSW must not make an order on an application under this section if:
  - (a) another Act or a statutory instrument provides for redress to the employee in relation to the dismissal, and
  - (b) the employee has commenced proceedings under the other Act or instrument or has not lodged a written undertaking not to proceed under the other Act or instrument.
- (9) Evidence of the fact that the Industrial Court of NSW has made an order under this section in respect of the unlawful dismissal of an employee is not admissible in proceedings for an offence against section 23.
- (10) In any proceedings under this section, if an employee establishes that a matter referred to in section 23 (1) (a), (b) or (c) occurred or existed before the employee's dismissal, it is presumed that the employee was dismissed because of that matter. That presumption is rebutted if the employer satisfies the Industrial Court of NSW that the matter was not a substantial and operative cause of the dismissal.

**Note—**

Appeals against a decision of the Industrial Court of NSW under this section are dealt with under Part 7 of Chapter 4 of the *Industrial Relations Act 1996*.

**24 Person not to hinder aid to injured worker etc**

- (1) A person must not, by intimidation or by any other act or omission, intentionally hinder or obstruct or attempt to hinder or obstruct, without reasonable excuse:
  - (a) the giving or receiving of aid in respect of the illness or injury of a person at work, or
  - (b) the doing of any act or thing to avoid or prevent a serious risk to the health or safety of a person at work.
- (2) A person at a place of work must not, without reasonable excuse, refuse any reasonable request:
  - (a) for assistance in the giving or receiving of aid in respect of the illness or injury of a person at work at that place of work, or
  - (b) for the doing of any act or thing to assist in the avoidance or prevention of a serious risk to the health or safety of a person at work at that place of work.

Maximum penalty:

- (a) in the case of a corporation (being a previous offender)—7,500 penalty units, or
- (b) in the case of a corporation (not being a previous offender)—5,000 penalty units, or
- (c) in the case of an individual (being a previous offender)—750 penalty units, or
- (d) in the case of an individual (not being a previous offender)—500 penalty units.

**25 Person not to disrupt workplace by creating health or safety fears**

A person must not, without reasonable excuse, deliberately create a risk (or the appearance of a risk) to the health or safety of people at a place of work with the intention of causing a disruption of work at that place.

Maximum penalty:

- (a) in the case of a previous offender—75 penalty units, or
- (b) in any other case—50 penalty units.

## **Division 4 Ancillary provisions**

### **26 Offences by corporations—liability of directors and managers**

- (1) If 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, is taken to have contravened the same provision unless the director or person satisfies the court that:
  - (a) he or she was not in a position to influence the conduct of the corporation in relation to its contravention of the provision, or
  - (b) he or she, 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.
- (4) In the case of a corporation that is a local council, a member of the council (in his or her capacity as such a member) is not to be regarded as a director or person concerned in the management of the council for the purposes of this section.

### **27 Aiding and abetting etc**

- (1) A person:
  - (a) who aids, abets, counsels or procures, or
  - (b) who, 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 is taken 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 or her duties as an officer of a Federal or State industrial organisation of employees or employers.

### **28 Defence**

It is a defence to any proceedings against a person for an offence against a provision of this Act or the regulations if the person proves that:

- (a) it was not reasonably practicable for the person to comply with the provision, or

- (b) the commission of the offence was due to causes over which the person had no control and against the happening of which it was impracticable for the person to make provision.

### **29 Relationship between duties under this Part and regulations**

- (1) Compliance with the regulations is not in itself a defence in any proceedings for an offence against this Part.
- (2) However, a relevant contravention of the regulations is admissible in evidence in any proceedings for an offence against this Part.
- (3) This section is subject to any regulations under section 37.

#### **Note—**

See Part 4 for provisions relating to the use of approved industry codes of practice in proceedings for offences against this Part.

### **30 Alternative verdicts**

If in proceedings against a person for an offence against a provision of section 8 or 9 the court is not satisfied that the person contravened that provision but is satisfied that the act or omission concerned constituted a contravention of another provision of section 8 or 9, the court may convict the person of an offence against that other provision.

### **31 Multiple contraventions of general duties under Division 1**

- (1) More than one contravention of a provision of Division 1 by a person that arise out of the same factual circumstances may be charged as a single offence or as separate offences.
- (2) This section does not authorise contraventions of 2 or more of those provisions to be charged as a single offence.
- (3) A single penalty only may be imposed in respect of more than one contravention of any such provision that is charged as a single offence.

### **32 Civil liability not affected by this Part**

- (1) Nothing in this Part is to 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 Part, or
  - (b) as conferring a defence to an action in any civil proceedings or as otherwise affecting a right of action in any civil proceedings.
- (2) Subsection (1) does not affect the extent (if any) to which a breach of duty imposed by the regulations is actionable (including any regulation that adapts a provision of

this Part).

## Part 2A Workplace deaths—offence

### 32A Reckless conduct causing death at workplace by person with OHS duties

(1) In this section:

**conduct** includes acts or omissions.

(2) A person:

- (a) whose conduct causes the death of another person at any place of work, and
- (b) who owes a duty under Part 2 with respect to the health or safety of that person when engaging in that conduct, and
- (c) who is reckless as to the danger of death or serious injury to any person to whom that duty is owed that arises from that conduct,

is guilty of an offence.

Maximum penalty:

- (a) in the case of a corporation—15,000 penalty units, or
- (b) in the case of an individual—imprisonment for 5 years or 1,500 penalty units, or both.

#### Note—

Section 17 of the *Crimes (Sentencing Procedure) Act 1999* provides, at the enactment of this Act, that the value of a penalty unit is \$110. Accordingly, the above maximum penalties are as follows:

- (a) in the case of a corporation—\$1,650,000,
- (b) in the case of an individual—\$165,000 or imprisonment for 5 years, or both.

(3) It is a defence to any proceedings against a person for that offence if the person proves that there was a reasonable excuse for the conduct.

#### Note—

Section 28 provides general defences for any offence against the Act.

(4) For the purposes of this section:

- (a) a person's conduct causes death if it substantially contributes to the death, and
- (b) the death of a person is taken to have been caused at a place of work if the person is injured at the place of work but dies elsewhere as a result of the injury, and



(c) it does not matter that the conduct that causes death did not occur at the place of work.

- (5) If a corporation owes a duty under Part 2 with respect to the health or safety of any person, any director or other person concerned in the management of the corporation is taken also to owe that duty for the purposes of subsection (2).
- (6) Section 26 (Offences by corporations—liability of directors and managers) does not apply to an offence against this section. However, this does not prevent a director or other person concerned in the management of a corporation from being prosecuted under this section for an offence committed by the director or other person.

### **32B Prosecution for offences under this Part**

- (1) Proceedings for an offence against this Part may only be dealt with summarily before the Industrial Relations Commission in Court Session, despite anything to the contrary in section 105.
- (2) Proceedings for an offence against this Part may be instituted only with the written consent of a Minister of the Crown or by an inspector, despite anything to the contrary in section 106.
- (3) However, any person who would, but for subsection (2), be entitled to institute proceedings for an offence against this Part may make a written application to WorkCover for a statement of the reasons why proceedings for such an offence have not been instituted in respect of alleged conduct that may constitute such an offence. WorkCover is to provide a statement of those reasons to the applicant as soon as practicable after the application is made, unless the alleged conduct has been referred to the Director of Public Prosecutions for consideration of the institution of proceedings.
- (4) Section 197A (Appeals against acquittals in proceedings for offences against occupational health and safety legislation) of the *Industrial Relations Act 1996* does not apply to an offence against this Part.

## **Part 3 Regulations**

### **33 Regulations: general power**

- (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) Any specific power to make regulations under this Act does not limit the generality of subsection (1).

### **34 Regulations: specific miscellaneous powers**

Regulations may be made for or with respect to the following:

- (a) regulating or prohibiting:
  - (i) the design, manufacture, supply or use of any plant, and
  - (ii) the design, manufacture, supply, storage, transport or use of any substance, and
  - (iii) the carrying on of any process or the carrying out of any activity,
- (b) requiring persons to identify, assess and deal with the risks to the health and safety of persons arising from work (including risks arising from the place of work or from any plant or substance for use at work),
- (c) designating the persons (whether employers, self-employed persons, principal contractors or other persons) who are to be responsible for compliance with the obligations imposed by the regulations,
- (d) requiring a person, before commencing to carry out work of a particular kind at a place of work, to give WorkCover or other persons notice of the proposed work in accordance with the regulations,
- (e) requiring persons, in any circumstances involving a risk to their health, to undergo a biological, hearing or other test,
- (f) requiring persons to not eat, drink or smoke in any circumstances involving a risk to their health,
- (g) measures for detecting and investigating cases in which the health of persons has been affected, including medical examinations, the making of biological, hearing or other tests and the notification of absences from work,
- (h) the making, keeping and inspection of records of matters relating to risks to health and the furnishing of returns and information relating to those matters, including returns and information relating to medical examinations and to biological, hearing or other tests,
- (i) the analysis of any substance,
- (j) the fees chargeable or payable for doing any act or providing any service in connection with this Act or the regulations,
- (k) forms for the purposes of this Act or the regulations,
- (l) the manner of serving notices under this Act or the regulations,
- (m) the review of actions and determinations of an inspector or other person,

- (n) any information to be provided to any person by an inspector or other person exercising functions under this Act,
- (o) any matter relating to occupational health and safety with respect to which regulations may be made under the associated occupational health and safety legislation.

**35 Regulations: specific powers with respect to licences, certificates of competency, registration and other authorities**

- (1) Regulations may be made for or with respect to the following:
  - (a) requiring any person to hold a permit, or any business, plant, substance or place of work to be licensed or registered, in any circumstances or as a condition of the carrying on of any activity or the doing of any thing,
  - (b) the granting, renewal, cancellation or suspension of a permit, licence or certificate of registration,
  - (c) the conditions on which permits, licences or certificates of registration may be granted,
  - (d) the establishment, membership, functions and procedure of a body that grants, renews, cancels or suspends permits, licences or certificates of registration,
  - (e) reviews of a decision of a body not to grant or renew or to cancel or suspend a permit, licence or certificate of registration.
- (2) A reference in subsection (1) to a permit includes a reference to a certificate of competency.

**36 Regulations may prescribe decisions that are to be reviewable by Administrative Decisions Tribunal**

- (1) The regulations may authorise a person to apply to the Administrative Decisions Tribunal for a review of a decision, of a class prescribed by the regulations, that is made under this Act or the regulations.
- (2) Any such regulation cannot be made without the concurrence of the Minister administering the [Administrative Decisions Tribunal Act 1997](#).

**37 Regulations: adapting duties under Part 2**

The regulations may adapt the provisions of Part 2 to meet the circumstances of any specified class of case.

**38 Regulations may adopt other publications**

The regulations may apply, adopt or incorporate any publication as in force at a particular

time or from time to time.

### **39 Regulations may create criminal offences**

The regulations may create offences punishable by a penalty not exceeding 250 penalty units.

#### **39A Civil liability under regulations**

The regulations may provide that nothing in a specified provision or provisions of the regulations is to be construed:

- (a) as conferring a right of action in any civil proceedings in respect of any contravention, whether by act or omission, of the provision or provisions, or
- (b) as conferring a defence to an action in any civil proceedings or as otherwise affecting a right of action in any civil proceedings,

but the failure of the regulations to so provide in respect of a provision is not to be construed as conferring such a right of action or defence.

## **Part 4 Industry codes of practice**

### **40 Purpose of industry codes of practice**

The purpose of an industry code of practice is to provide practical guidance to employers and others who have duties under Part 2 with respect to occupational health, safety and welfare.

### **41 WorkCover may prepare draft codes**

- (1) WorkCover may prepare draft industry codes of practice.
- (2) An industry code of practice may refer to or incorporate, with or without modification, a document prepared or published by a body specified in the code, as in force at a particular time or from time to time.

### **42 Consultation on draft codes**

- (1) WorkCover is to consult with such organisations or persons as the Minister may direct about a draft code and may consult with such others as WorkCover thinks appropriate.
- (2) WorkCover is to take into consideration any submissions it receives that relate to a draft code before it makes any recommendation to the Minister for its approval.

### **43 Approval of codes by Minister**

The Minister may, having regard to any recommendation of WorkCover, approve an industry code of practice.

#### **44 Publication, commencement and availability of codes**

- (1) An approved industry code of practice:
  - (a) is to be published in the Gazette, and
  - (b) takes effect on the day on which it is so published or, if a later day is specified in the code for that purpose, on the later day so specified.
- (2) The following are to be made available for public inspection without charge at the principal office of WorkCover during normal office hours:
  - (a) a copy of each approved industry code of practice,
  - (b) if an approved industry code of practice has been amended, a copy of the code as so amended,
  - (c) if an approved industry code of practice refers to or incorporates any other document prepared or published by a specified body, a copy of each such document.

#### **Editorial note—**

For codes of practice under this section see Gazettes No 143 of 21.9.2001, pp 8014, 8091, 8098, 8106, 8135; No 178 of 18.10.2002, p 8951; No 198 of 10.12.2004, p 9176; No 200 of 17.12.2004, p 9548; No 94 of 29.7.2005, p 3989; No 107 of 26.8.2005, p 6308; No 110 of 1.9.2005, p 7020; No 40 of 31.3.2006, pp 1746, 1762; No 58 of 28.4.2006, p 2582; No 75 of 9.6.2006, p 4268; No 118 of 22.9.2006, pp 8216, 8290 and No 139 of 17.11.2006, p 9800.

#### **45 Amendment or revocation of codes**

An approved industry code of practice may be amended or revoked by an instrument prepared, approved and published in accordance with the relevant procedures of this Part with respect to industry codes of practice.

#### **46 Use of codes**

- (1) In any proceedings for an offence against this Act or the regulations:
  - (a) an approved industry code of practice that is relevant to any matter which it is necessary for the prosecution to prove to establish the commission of the offence by a person is admissible in evidence in those proceedings, and
  - (b) the person's failure at any material time to observe the code is evidence of the matter to be established in those proceedings.
- (2) A person is not liable to any civil or criminal proceedings by reason only that the person has failed to observe an approved industry code of practice.

## **Part 5 Investigations**

### **Division 1 Appointment of inspectors**

#### **47 Appointment of inspectors (otherwise than in connection with mines)**

- (1) WorkCover may appoint as inspectors for the purposes of this Act and the regulations any of the following persons:
  - (a) a statutory officer,
  - (b) a public servant,
  - (c) a person employed by a public or local authority,
  - (d) a person belonging to a class of persons prescribed by the regulations.
- (2) A person appointed as an inspector under this section is not authorised to exercise functions under this Act in relation to a mine.

#### **47A Appointment of inspectors in connection with mines**

- (1) The Minister may appoint as an inspector for the purposes of this Act and the regulations any person who is, or could be appointed or designated as, an inspector, mine safety officer or investigator under the [Coal Mines Regulation Act 1982](#) or the [Mines Inspection Act 1901](#).
- (2) An instrument appointing a person as an inspector under this section may limit the functions that the person has as such an inspector.
- (3) A person appointed as an inspector under this section is only authorised to exercise functions under this Act in relation to a mine, but may exercise functions under Division 2 in relation to premises other than a mine for the purpose of investigating any matter under this Act in relation to a mine.

#### **48 Identification of inspectors**

- (1) Every inspector appointed under section 47 or 47A is to be issued with an identification card as an inspector that complies with this section.
- (2) The identification card must:
  - (a) state that it is issued under this Act, and
  - (b) give the name of the person to whom it is issued, and
  - (c) state the date (if any) on which it expires, and
  - (d) describe the kinds of premises to which the powers of the inspector extend, and

- (e) state any limitations on the functions that the inspector is authorised to exercise under this Act that are imposed by the inspector's instrument of appointment, and
  - (f) bear the signature of:
    - (i) in the case of an inspector appointed under section 47, the Chief Executive Officer of WorkCover or an officer approved by the Chief Executive Officer of WorkCover for the purposes of this paragraph, or
    - (ii) in the case of an inspector appointed under section 47A, the Minister or a person authorised by the Minister.
- (3) Nothing in this section prevents a single identification card being issued to a person in respect of functions to be exercised as an inspector under section 47A and functions to be exercised under the *Coal Mines Regulation Act 1982* or the *Mines Inspection Act 1901*, or both.

## **Division 2 Powers of inspectors**

### **Note—**

See Part 6 for powers of inspectors to issue investigation, improvement or prohibition notices.

### **49 (Repealed)**

### **50 Powers of entry for places of work**

For the purposes of this Act or the regulations, an inspector may enter any premises the inspector has reason to believe is a place of work.

### **Note—**

See section 57 with respect to entry into any part of premises used only for residential purposes.

### **51 Notice of entry**

- (1) An inspector authorised to enter premises under this Division may enter the premises without notice.
- (2) The inspector must notify the occupier of the premises of the inspector's presence on the premises as soon as reasonably practicable after entering the premises, unless:
  - (a) to do so would defeat the purpose for which the premises were entered or would unreasonably delay the inspector in a case of urgency, or
  - (b) the occupier is already aware that the inspector has entered the premises or was notified in advance of when the inspector would enter the premises.

### **52 Production of authority to enter premises**

- (1) A power conferred on an inspector by this Division to enter premises, or to make an

inspection or take other action on premises, may not be exercised unless the inspector proposing to exercise the power is in possession of the identification card issued to the inspector and produces the identification card if required to do so by the occupier of the premises.

(2) This section does not apply to a power conferred by a search warrant.

### **53 Time for entry into premises**

(1) Entry under a power conferred by this Division may only be made at a reasonable time in the daytime or at any hour when work is carried on or is usually carried on at the premises.

(2) This section does not apply to a power conferred by a search warrant.

### **54 Use of force on entry**

(1) Reasonable force may be used for the purpose of gaining entry to premises under a power conferred by this Division, but only if authorised by WorkCover in accordance with this section or in cases of emergency.

(2) The authority of WorkCover:

(a) must be in writing, and

(b) must be given in respect of the particular entry concerned, and

(c) must specify the circumstances that are required to exist before force may be used.

(3) This section does not apply to a power conferred by a search warrant and does not affect section 70 of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

### **55 Notification of use of force on entry**

(1) An inspector authorised to enter premises under this Division who uses force for the purpose of gaining entry to the premises must promptly advise WorkCover of the use of force.

(2) WorkCover must give written notice of the entry to such persons or authorities as appear to WorkCover to be appropriate in the circumstances.

### **56 Compensation**

WorkCover must pay compensation for any loss or damage caused by any inspector in the exercise of any power to enter premises under this Division, but not if that loss or damage is caused because the occupier obstructed, hindered or restricted the inspector in the exercise of the power of entry.



### **57 Entry to premises used for residential purposes**

The powers of entry conferred by this Division are not exercisable in relation to any part of premises used only for residential purposes except:

- (a) with the permission of the occupier of the premises, or
- (b) under the authority conferred by a search warrant.

### **58 Search warrant**

- (1) An inspector may apply to an authorised officer for a search warrant if the inspector has reasonable grounds for believing that a provision of this Act or the regulations has been or is being or is about to be contravened in or about any premises.
- (2) An authorised officer to whom an application is made under this section may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising the inspector named in the warrant to enter the premises and to search the premises for evidence of a contravention of this Act or the regulations.
- (3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.
- (4) In this section:

**authorised officer** has the same meaning as it has in the *Law Enforcement (Powers and Responsibilities) Act 2002*.

### **59 General powers available on entry**

For the purposes of this Act or the regulations, an inspector who enters premises under this Division may do any of the following:

- (a) make searches, inspections, examinations and tests (and take photographs and make video and audio recordings),
- (b) take for analysis a sample of any substance or thing which in the inspector's opinion may be, or may contain or be contaminated by, a substance (or a degradation product of a substance) that is a risk to health,
- (c) in the case of an inspector who is a medical practitioner, carry out medical examinations with the consent of the person proposed to be examined,
- (d) carry out biological tests in such manner and in such circumstances as may be prescribed by the regulations,
- (e) require any person in or about those premises to answer questions or otherwise furnish information,
- (f) require the occupier of those premises to provide the inspector with such assistance

and facilities as is or are reasonably necessary to enable the inspector to exercise the inspector's functions,

- (g) require the production of and inspect any documents in or about those premises,
- (h) take copies of or extracts from any such documents,
- (i) exercise all other functions that are conferred by, or are reasonably necessary for the purposes of, this Act or the regulations.

#### **60 Powers available on entry to dismantle, take and keep things**

For the purposes of this Act or the regulations, an inspector who enters premises under this Division may do any of the following:

- (a) dismantle any plant or other thing on the premises for the purpose of examination, if the inspector believes on reasonable grounds that the plant or other thing has been used in the commission of an offence against this Act or the regulations,
- (b) take any plant, substance or other thing (or any sample of a substance) from the premises, if the inspector believes on reasonable grounds that the plant, substance or other thing has been used in the commission of an offence against this Act or the regulations,
- (c) keep any plant, substance, sample or other thing taken under this section that:
  - (i) may reasonably be required as evidence in proceedings for an offence against this Act or the regulations, or
  - (ii) might, if not so kept, be used to continue or repeat the offence.

#### **Note—**

See sections 70-75 for provisions relating to the exercise of the above powers.

#### **61 Care to be taken**

In the exercise of a function under this Division, an inspector must do as little damage as possible.

#### **62 Power of inspectors to obtain information, documents and evidence**

- (1) An inspector may, by notice in writing served on a person, require the person to do any one or more of the following things if the inspector has reasonable grounds to believe that the person is capable of giving information, producing documents or giving evidence in relation to a possible contravention of this Act or the regulations:
  - (a) to give an inspector, in writing signed by the person (or, in the case of a body corporate, by a competent officer of the body corporate) and within the time and in the manner specified in the notice, any such information of which the person

has knowledge,

(b) to produce to an inspector, in accordance with the notice, any such documents,

(c) to appear before an inspector at a time and place specified in the notice and give either orally or in writing any such evidence and produce any such documents.

- (2) A notice under this section must contain a warning that a failure to comply with the notice is an offence.
- (3) An inspector may inspect a document produced in response to a notice under this section and may make copies of, or take extracts from, the document.
- (4) An inspector may take possession and retain possession for as long as is necessary for the purposes of this Act, of a document produced in response to a notice under this section if the person otherwise entitled to possession of the document is supplied, as soon as practicable, with a copy certified by an inspector to be a true copy.
- (5) A certified copy provided under subsection (4) is receivable in all courts as if it were the original.
- (6) Until a certified copy of a document is provided under subsection (4), the inspector who has possession of the document must, at such times and places as the inspector thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect the document and make copies of, or take extracts from, the document.

### **63 Power of inspector to demand name and address**

- (1) An inspector may require a person whom the inspector reasonably suspects has committed an offence against this Act or the regulations to state the person's full name and residential address.
- (2) The inspector may request the person to provide reasonable proof of the person's identity.
- (3) A person who, without reasonable excuse, fails to comply with a requirement of an inspector under this section is guilty of an offence.

Maximum penalty: 15 penalty units.

- (4) A person does not commit an offence against this section if:
  - (a) the inspector does not, at the time when the inspector makes the requirement, show the person the inspector's identification card, or
  - (b) the inspector does not, at the time when the inspector makes the requirement, warn the person that it would be an offence not to comply with the requirement.

#### **64 Attendance of inspector at coronial inquest**

An inspector may attend and has authority to examine witnesses at any inquest into the cause of death of any employee while employed at a place of work.

#### **65 Protection from incrimination**

- (1) **Self-incrimination not an excuse** A person is not excused from a requirement under this Division to make a statement, to give or furnish information, to answer a question or to produce a document on the ground that the statement, information, answer or document might incriminate the person or make the person liable to a penalty.
- (2) **Statement, information or answer not admissible if objection made** However, any statement made or any information or answer given or furnished by a natural person in compliance with a requirement under this Division is not admissible in evidence against the person in criminal proceedings (except proceedings for an offence under this Division) if:
  - (a) the person objected at the time to doing so on the ground that it might incriminate the person, or
  - (b) the person was not warned at an appropriate time that the person may object to making the statement or giving or furnishing the information or answer on the ground that it might incriminate the person.
- (2A) **Appropriate time for giving warning about incrimination** An **appropriate time** for warning a person as referred to in subsection (2) (b) is any of the following times:
  - (a) the time when the requirement to make the statement or to give or furnish the answer or information is made,
  - (b) in the case of evidence required to be given when appearing before an inspector, any time after the start of the appearance before the inspector,
  - (c) at or about the time immediately before the person makes the statement or gives or furnishes the answer or information.
- (3) **Documents admissible** Any document produced by a person in compliance with a requirement under this Division is not inadmissible in evidence against the person in criminal proceedings on the ground that the document might incriminate the person.
- (4) **Further information** Further information obtained as a result of a document produced, a statement made or information or an answer given or furnished in compliance with a requirement under this Division is not inadmissible on the ground:
  - (a) that the document, statement, information or answer had to be produced, made, given or furnished, or

- (b) that the document, statement, information or answer might incriminate the person.

#### **66 Offence: compliance**

A person must not:

- (a) without reasonable excuse, refuse or fail to comply with a requirement made or to answer a question of an inspector asked in accordance with this Division, or
- (b) in purported compliance with a requirement under this Division, or in answer to a question of an inspector asked in accordance with this Division, give or furnish information or evidence or produce a document knowing it to be false or misleading in a material particular.

Maximum penalty:

- (a) in the case of a previous offender—150 penalty units, or
- (b) in any other case—100 penalty units.

#### **67 Offence of impersonating an inspector**

A person must not impersonate, or falsely represent that the person is, an inspector.

Maximum penalty: 100 penalty units.

#### **68 Inspector may request assistance**

- (1) A police officer may accompany and take all reasonable steps to assist an inspector in the exercise of the inspector's functions under this Division:
  - (a) in executing a search warrant issued under section 58, or
  - (b) if the inspector reasonably believes that he or she may be obstructed in the exercise of those functions.
- (2) Any person whom an inspector believes to be capable of providing assistance in the exercise of the inspector's functions under this Division may accompany the inspector and take all reasonable steps to assist the inspector in the exercise of the inspector's functions.
- (3) Nothing in subsection (1) is to be taken to limit the generality of section 71 of the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#).

#### **69 Power of employees' representative to accompany inspector**

An inspector who is proposing to undertake an inspection of a place of work with respect to a matter that may affect the health, safety or welfare of employees at the place of work:

- (a) must, to the extent that it is practicable, consult a representative of the employees or an industrial organisation of employees whose members are employed at the place of work, and
- (b) must, if requested to do so by the representative, take the representative on any such inspection.

#### **70 Notice of taking or dismantling plant, substances or other things**

- (1) Before exercising any of the powers under section 60 (Powers available on entry to dismantle, take and keep things), an inspector must give notice to the occupier of a place of work where the thing is situated of the inspector's intention to exercise that power.
- (2) The notice must specify the date and time when the inspector proposes to exercise the powers as well as the thing in relation to which the powers are to be exercised.

#### **71 Powers supporting taking of things**

- (1) Having taken a thing under section 60, an inspector may:
  - (a) move the thing from the place where it was taken, or
  - (b) leave the thing at the place but take reasonable action to restrict access to it, or
  - (c) if the thing is plant—dismantle it.
- (2) The following are examples of restricting access to a thing:
  - (a) sealing a thing and marking it to show access to it is restricted,
  - (b) sealing the entrance to a room where the thing is situated and marking it to show access to it is restricted.
- (3) If an inspector restricts access to a thing taken, a person must not tamper, or attempt to tamper, with the thing or something restricting access to the thing without an inspector's approval.

Maximum penalty: 40 penalty units.

- (4) To enable a thing to be taken under section 60, an inspector may require the person in control of it:
  - (a) to take it to a stated reasonable place by a stated reasonable time, and
  - (b) if necessary, to remain in control of it at the stated place for a reasonable time.
- (5) The requirement:
  - (a) must be made by notice in the form approved by WorkCover, or

(b) if for any reason it is not practicable to give the notice, may be made orally and confirmed by notice in that approved form as soon as practicable.

(6) The person must comply with the requirement unless the person has a reasonable excuse for not complying.

Maximum penalty: 40 penalty units.

(7) A further requirement may be made under this section in relation to the same thing if it is necessary and reasonable to make the further requirement.

## **72 Receipt for things taken**

(1) As soon as reasonably practicable after an inspector takes a thing under section 60, the inspector must give a receipt for it to the person from whom it was taken.

(2) However, if for any reason it is not practicable to comply with subsection (1), the inspector must leave the receipt in a conspicuous position and in a reasonably secure way at the place where the thing was taken.

(3) The receipt must describe generally each thing taken and its condition.

(4) This section does not apply to a thing if it is impracticable or would be unreasonable to give the receipt required by this section (given the thing's nature, condition and value).

## **73 Forfeiture of things taken**

(1) A thing taken under section 60 is forfeited to the State if the inspector who took the thing:

(a) cannot find its owner after making reasonable inquiries, or

(b) cannot return it to its owner, after making reasonable efforts, or

(c) reasonably believes it is necessary to retain the thing to prevent it being used to commit an offence against this Act or the regulations.

(2) Subsection (1) (a) does not require the inspector to make inquiries if it would be unreasonable to make inquiries to find the owner, and subsection (1) (b) does not require the inspector to make efforts if it would be unreasonable to make efforts to return the thing to its owner.

(3) If the inspector decides to forfeit a thing under subsection (1) (c), the inspector must tell the owner of the decision by written notice.

(4) Subsection (3) does not apply if:

(a) the inspector cannot find its owner, after making reasonable inquiries, or

(b) it is impracticable or would be unreasonable to give the notice.

(5) The notice must state:

(a) the reasons for the decision, and

(b) that the owner may apply within 28 days for the decision to be reviewed by WorkCover, and

(c) how the owner may apply for the review, and

(d) that the owner may apply for a stay of the decision if the owner applies for a review.

Division 4 of Part 6 applies to the notice in the same way as it applies to a prohibition notice.

(6) In deciding whether and, if so, what inquiries and efforts are reasonable or whether it would be unreasonable to give notice about a thing, regard must be had to the thing's nature, condition and value.

#### **74 Return of things taken**

(1) If a thing taken under section 60 has not been forfeited, the inspector must return it to its owner at the end of:

(a) 6 months, or

(b) if a proceeding for an offence involving it is started within 6 months—the proceeding and any appeal from the proceeding.

(2) Despite subsection (1), unless the thing has been forfeited, the inspector must immediately return a thing taken as evidence to its owner if the inspector stops being satisfied its continued retention as evidence is necessary.

#### **75 Access to things taken**

(1) Until a thing taken under section 60 is forfeited or returned, an inspector must allow its owner to inspect it and, if it is a document, to copy it.

(2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.

### **Division 3 Entry and inspection powers of authorised employees' representatives**

#### **76 Definition**

In this Division:



**authorised representative** of an industrial organisation of employees, means an officer of that organisation (including any person who is concerned in, or takes part in, the management of that organisation) who is authorised under Part 7 of Chapter 5 of the *Industrial Relations Act 1996*.

#### **77 Powers of entry of places of work**

An authorised representative of an industrial organisation of employees may, for the purpose of investigating any suspected breach of the occupational health and safety legislation, enter any premises the representative has reason to believe is a place of work where members of that organisation (or persons who are eligible to be members of that organisation) work.

#### **78 Notice of entry**

- (1) An authorised representative authorised to enter premises under this Division may enter the premises without notice.
- (2) The authorised representative must notify the occupier of the premises of the authorised representative's presence on the premises as soon as reasonably practicable after entering the premises, unless:
  - (a) to do so would defeat the purpose for which the premises were entered or would unreasonably delay the authorised representative in a case of urgency, or
  - (b) the occupier is already aware that the authorised representative has entered the premises or was notified in advance of when the authorised officer would enter the premises.

#### **79 Authority to enter premises**

- (1) A power conferred by this Division to enter premises, or to make an inspection or take other action on premises, may not be exercised unless the person proposing to exercise the power is in possession of an authority issued by the Industrial Registrar under Part 7 of Chapter 5 of the *Industrial Relations Act 1996* and produces the authority if required to do so by the occupier of the premises.
- (2) Entry may only be made at a reasonable time in the daytime or at any hour when work is carried on or is usually carried on at the premises.

#### **80 Entry to premises used for residential purposes**

The powers of entry conferred by this Division are not exercisable in relation to any part of premises used only for residential purposes except with the permission of the occupier of the premises.

### **81 Powers available on entry**

For the purpose of investigating any suspected breach of the occupational health and safety legislation, an authorised representative who enters premises under this Division may do any of the following:

- (a) make searches and inspections (and take photographs and make video and audio recordings),
- (b) require the occupier of those premises to provide the authorised representative with such assistance and facilities as is or are reasonably necessary to enable the representative to exercise his or her functions under this Division,
- (c) require the production of and inspect any documents in or about those premises that directly affect or directly deal with the occupational health and safety of employees working at those premises,
- (d) take copies of or extracts from any such documents.

### **82 Care to be taken**

In the exercise of a function under this Division, an authorised representative must do as little damage as possible.

### **83 Authorised representative may request assistance from inspector**

An inspector may accompany and take all reasonable steps to assist an authorised representative in the exercise of the representative's functions under this Division if the representative reasonably believes that he or she may be obstructed in the exercise of those functions.

### **84 Offence of failing to comply with requirement of authorised representative**

A person must not, without reasonable excuse, refuse or fail to comply with a requirement made by an authorised representative in accordance with this Division.

Maximum penalty: 20 penalty units.

### **85 Offence of impersonating an authorised representative**

A person must not impersonate, or falsely represent that the person is, an authorised representative.

Maximum penalty: 100 penalty units.

## **Division 4 Incidents at places of work**

### **86 Notification of incidents**

- (1) The occupier of any place of work must give WorkCover notice in accordance with this

section of any of the following incidents:

- (a) any serious incident at the place of work (as referred to in section 87),
- (b) any incident occurring at or in relation to the place of work that the regulations declare to be an incident that is required to be notified to WorkCover.

Maximum penalty:

- (a) in the case of a corporation (being a previous offender)—750 penalty units, or
- (b) in the case of a corporation (not being a previous offender)—500 penalty units, or
- (c) in the case of an individual (being a previous offender)—375 penalty units, or
- (d) in the case of an individual (not being a previous offender)—250 penalty units.

(2) Any such notice must be given:

- (a) as soon as practicable (but not later than 7 days) after the occupier becomes aware of the incident, and
- (b) in the manner and form required by the regulations.

(3) Any such notice must, in the case of a serious incident, also be given:

- (a) immediately the occupier becomes aware of the incident, and
- (b) by the quickest available means.

This subsection does not apply if the occupier is aware that another person has given WorkCover notice of the incident.

(3A) Despite subsection (1), an occupier is not required to give notice under this section if the occupier has given notice of the incident in accordance with section 44 (2) of the [Workplace Injury Management and Workers Compensation Act 1998](#).

(4) The regulations may vary the obligations under this section with respect to the person required to give notice and the time and manner in which the notice is to be given.

(5) This section does not apply to a mine.

## **87 Non-disturbance of plant involved in serious incidents (and of surrounding area)**

(1) In this section:

**serious incident** means:

- (a) an incident that has resulted in a person being killed, or
- (b) any other incident prescribed by the regulations for the purposes of this definition.

- (2) The occupier of a place of work must take measures to ensure that:
- (a) plant at that place is not used, moved or interfered with after it has been involved in a serious incident, and
  - (b) the area at that place that is within 4 metres (or, if the regulations prescribe some other distance, that other distance) of the location of a serious incident is not disturbed.

Maximum penalty:

- (a) in the case of a corporation (being a previous offender)—750 penalty units, or
  - (b) in the case of a corporation (not being a previous offender)—500 penalty units, or
  - (c) in the case of an individual (being a previous offender)—375 penalty units, or
  - (d) in the case of an individual (not being a previous offender)—250 penalty units.
- (3) If the regulations prescribe measures that satisfy the requirements of this section, the occupier is taken to have satisfied those requirements if the occupier has taken the measures so prescribed.
- (4) This section does not prevent any action:
- (a) to help or remove a trapped or injured person or to remove a body, or
  - (b) to avoid injury to a person or damage to property, or
  - (c) for the purposes of any police investigation, or
  - (d) in accordance with a direction or permission of an inspector, or
  - (e) in such other circumstances as may be prescribed by the regulations.
- (5) The requirements of this section in relation to any particular incident apply only for the period ending 36 hours after notification of the incident in accordance with section 86. After the end of that period, non-disturbance requirements may apply by virtue of an investigation notice under Part 6.
- (6) This section does not apply to a mine.

### **88 Minister may require and publish special reports into incidents**

- (1) The Minister may direct WorkCover, or any department of the Government responsible to the Minister, to prepare a special report for the Minister with respect to:
- (a) any incident that occurred at a place of work and that caused the death of or bodily injury to any person, or

(b) any incident at a place of work that constituted a danger to any person.

(2) The Minister may, if the Minister thinks fit, cause such a report or any part of such a report to be made public, whether by causing the report or part of the report to be published or otherwise. The Minister may table a copy of the report in Parliament.

(3) No liability is incurred by the State and no personal liability is incurred by, or by any person acting at the direction of, the Minister, WorkCover or a department of the Government in respect of anything done in good faith in connection with the preparation or making public of a report under this section.

(4) No liability is incurred by a person for publishing in good faith:

(a) a report made public under this section, or

(b) a fair report or summary of such a report.

(5) This section applies to a mine.

(6) In this section:

**liability** includes liability in defamation.

**the State** includes the Crown in right of the State and the Government of the State.

## **Part 6 Investigation, improvement and prohibition notices**

### **Division 1 Investigation notices**

#### **89 Investigation notice to stop plant or prevent disturbance of premises to allow investigation**

(1) An inspector who has entered premises under Part 5 may issue an investigation notice to the occupier of the premises if the inspector believes on reasonable grounds that it is necessary to issue the notice in order to facilitate the exercise of the inspector's powers under Division 2 of that Part in respect of the premises.

(2) An investigation notice must set out the grounds on which it is issued.

(3) An investigation notice remains in force for the period, not exceeding 7 days, specified in the notice. A notice may be renewed more than once by an inspector by issuing a further investigation notice in accordance with this section.

#### **90 Offence: failure to comply with investigation notice**

While an investigation notice is in force, the occupier of the premises must:

(a) stop the use or movement of, or interference with, any plant, substance or thing that is specified in the notice, and

- (b) take measures to prevent the disturbance of any plant, substance or thing that is specified in the notice, or any specified area in which it is located.

Maximum penalty:

- (a) in the case of a corporation (being a previous offender)—750 penalty units, or
- (b) in the case of a corporation (not being a previous offender)—500 penalty units, or
- (c) in the case of an individual (being a previous offender)—375 penalty units, or
- (d) in the case of an individual (not being a previous offender)—250 penalty units.

## **Division 2 Improvement notices**

### **91 Issue of improvement notices**

- (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 a notice requiring the person to remedy the contravention or the matters occasioning it within the period specified in the notice.
- (2) The period within which a person is required by an improvement notice to remedy a contravention or the matters occasioning the contravention must be at least 7 days after the issue of the notice.
- (3) However, an inspector may specify a period that is less than 7 days after the issue of the improvement notice if satisfied that it is reasonably practicable for the person to comply with the requirements imposed by the notice by the end of that period.
- (4) An improvement notice must:
  - (a) state that the inspector is of the opinion referred to in subsection (1), and
  - (b) state the reasons for that opinion, and
  - (c) specify the provision of this Act or the regulations in respect of which that opinion is held, and
  - (d) include information about obtaining a review of the notice under this Part.

### **92 Offence: failure to comply with improvement notice**

A person who, without reasonable excuse, fails to comply with a requirement imposed by an improvement notice is guilty of an offence.

Maximum penalty:

- (a) in the case of a corporation (being a previous offender)—750 penalty units, or
- (b) in the case of a corporation (not being a previous offender)—500 penalty units, or
- (c) in the case of an individual not acting in the capacity of an employee (being a previous offender)—375 penalty units, or
- (d) in the case of an individual not acting in the capacity of an employee (not being a previous offender)—250 penalty units, or
- (e) in the case of an individual acting in the capacity of an employee (being a previous offender)—22.5 penalty units, or
- (f) in the case of an individual acting in the capacity of an employee (not being a previous offender)—15 penalty units.

## **Division 3 Prohibition notices**

### **93 Issue of prohibition notices**

- (1) If an inspector is of the opinion that at any place of work there is occurring or about to occur any activity which involves or will involve an immediate risk to the health or safety of any person, the inspector may issue to the person who has or may be reasonably presumed to have control over the activity a notice prohibiting the carrying on of the activity until the matters which give or will give rise to the risk are remedied.
- (2) A prohibition notice must:
  - (a) state that the inspector is of the opinion referred to in subsection (1), and
  - (b) state the reasons for that opinion, and
  - (c) specify the activity in respect of which that opinion is held, 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, and
  - (e) include information about obtaining a review of the notice under this Part.

### **94 Offence: failure to comply with prohibition notice**

A person who, without reasonable excuse, fails to comply with a requirement imposed by a prohibition notice is guilty of an offence.

Maximum penalty:

- (a) in the case of a corporation (being a previous offender)—1,500 penalty units, or

- (b) in the case of a corporation (not being a previous offender)—1,000 penalty units, or
- (c) in the case of an individual not acting in the capacity of an employee (being a previous offender)—750 penalty units, or
- (d) in the case of an individual not acting in the capacity of an employee (not being a previous offender)—500 penalty units, or
- (e) in the case of an individual acting in the capacity of an employee (being a previous offender)—45 penalty units, or
- (f) in the case of an individual acting in the capacity of an employee (not being a previous offender)—30 penalty units.

## **Division 4 General provisions relating to notices**

### **95 Notices may include directions**

- (1) An inspector may include in a notice under this Part directions as to the measures to be taken to remedy any contravention or matter to which the notice relates or to otherwise comply with the notice.
- (2) Any such direction may:
  - (a) adopt, by reference, the requirements of any industry or other code of practice or standard, and
  - (b) offer the person to whom it is issued a choice of ways in which to remedy the contravention or matter or to comply with the notice.

### **96 Review of notices by WorkCover**

- (1) A person who is issued with a notice under this Part may apply in writing to WorkCover for a review of the notice.
- (2) The application for review must be made within 7 days after the notice is issued or, if the regulations prescribe a different period, within the period so prescribed.
- (3) An application for review may be made only once in respect of any particular notice.
- (4) WorkCover is to review a notice that is the subject of a duly made application for review.
- (5) The notice is stayed (unless it is an investigation notice or a prohibition notice) from when the application for review is received by WorkCover until WorkCover gives notice to the applicant of the result of the review.

#### **Note—**

See section 98 for stay of investigation notice or prohibition notice.



- (6) WorkCover may, as a result of the review, confirm the notice, vary it or revoke it. The confirmation, variation or revocation has effect when notice of the result of the review is given to the applicant.
- (7) Regulations may be made with respect to reviews under this section.

**97 Appeal to Industrial Magistrate following review**

- (1) An applicant who is not satisfied with the result of a review by WorkCover of a notice under this Part may appeal against the notice to a Local Court constituted by an Industrial Magistrate sitting alone.
- (2) An appeal to a Local Court under this section does not operate to stay the notice the subject of the appeal except as otherwise ordered by the Court.
- (3) The Local Court may, on the appeal, confirm the notice, vary it or revoke it.
- (4) Regulations may be made with respect to appeals under this section, including the time and manner in which such an appeal is to be made.

**98 Application to Industrial Magistrate for stay of investigation or prohibition notice**

- (1) If a person duly applies under this Part for review of an investigation notice or a prohibition notice, the person may apply to a Local Court constituted by an Industrial Magistrate sitting alone for a stay of the notice.
- (2) A stay may be granted for such period as the Local Court considers appropriate, but not so as to extend past the time when notice of the result of the review is given to the applicant by WorkCover.
- (3) A stay may be granted on such conditions as the Local Court considers appropriate and may be revoked or amended by the Local Court.

**99 Withdrawal of notices**

- (1) A notice under this Part may be withdrawn at any time by the inspector who issued the notice or by WorkCover if the inspector or WorkCover is satisfied that the notice was issued in error or is incorrect in some respect.
- (2) The withdrawal has effect when notice of the withdrawal is given to the person to whom the notice was issued.

**100 Revocation or withdrawal of notice does not prevent issue of another notice**

The revocation or withdrawal of a notice under this Part does not prevent the issue of any other notice.

### **101 Service of notices**

- (1) A notice under this Part (including a notice confirming, revoking or withdrawing such a notice) may be issued or given to a person:
  - (a) by delivering it personally to the person, or
  - (b) by leaving it with some other person at, or sending it by post or facsimile transmission to, the person's place of residence or business or the place of work to which the notice relates.
- (2) This section does not affect the operation of any provision of a law or the rules of a court authorising a notice or other document to be served in a manner not authorised by this section.

### **102 Exhibition of notices**

- (1) An inspector may cause a notice containing a copy of or extract from a notice under this Part, or of the matter contained in the notice, to be exhibited at the place of work concerned in a manner approved by WorkCover.
- (2) A person must not destroy, damage or remove a notice so exhibited except with the approval of WorkCover or an inspector.

Maximum penalty:

- (a) in the case of a corporation—100 penalty units, or
- (b) in the case of an individual—50 penalty units.

### **103 Proceedings for offences not affected by notices**

The issue, variation, revocation or withdrawal of a notice under this Part does not affect any proceedings for an offence against this Act or the regulations in connection with any matter in respect of which the notice was issued.

### **104 (Repealed)**

## **Part 7 Criminal and other proceedings**

### **Division 1 Proceedings for offences generally**

#### **105 Summary procedure for offences**

- (1) Proceedings for an offence against this Act or the regulations are to be dealt with summarily:
  - (a) before a Local Court constituted by a Magistrate sitting alone, or
  - (b) before the Industrial Relations Commission in Court Session.

- (2) The maximum monetary penalty that may be imposed in those proceedings by a Local Court is 500 penalty units, despite any higher maximum monetary penalty provided in respect of the offence.
- (3) The provisions of the *Industrial Relations Act 1996*, and of the regulations under that Act, relating to appeals from a Local Court to the Industrial Relations Commission in Court Session in connection with offences against that Act apply to proceedings before a Local Court for offences against this Act or the regulations.

**Note—**

Section 197 of the *Industrial Relations Act 1996* deals with appeals against convictions or penalties in connection with offences against that Act. Section 197A of the *Industrial Relations Act 1996* provides a right of appeal to the Full Bench of the Industrial Relations Commission in Court Session against a decision of a member of the Commission or a Local Court to acquit a person of an offence against this Act or the regulations.

**106 Authority to prosecute**

- (1) Proceedings for an offence against this Act or the regulations may be instituted only:
  - (a) with the written consent of a Minister of the Crown, or
  - (b) with the written consent of an officer prescribed by the regulations, or
  - (c) by an inspector, or
  - (d) by the secretary of an industrial organisation of employees any member or members of which are concerned in the matter to which the proceedings relate.
- (2) In proceedings for an offence against this Act or the regulations, a consent to institute the proceedings, purporting to have been signed by a Minister or a prescribed officer, is evidence of that consent without proof of the signature of the Minister or prescribed officer.

**107 Time for instituting proceedings for offences**

- (1) 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, except as otherwise provided by this section or section 107A.
- (2) This subsection applies to an offence against section 11 (Duties of designers, manufacturers and suppliers of plant and substances for use at work) or section 86 (Notification of incidents). Proceedings for any such offence may be instituted:
  - (a) within 6 months after WorkCover first becomes aware of the act or omission alleged to constitute the offence, or
  - (b) within 2 years after the act or omission alleged to constitute the offence,whichever provides the longer period to institute proceedings.

- (3) If a coronial inquest or inquiry is held and it appears from the coroner's report or proceedings at the inquest or inquiry that an offence has been committed against this Act or the regulations (whether or not the offender is identified), proceedings in respect of that offence may be instituted within 2 years after the date the report was made or the inquest or inquiry was concluded.
- (4) This section applies despite anything in any other Act.

**107A Time for instituting proceedings—special provision for work incident notification**

- (1) If an act or omission alleged to constitute an offence against this Act or the regulations gives rise to an incident (a **work incident**) to which section 86 (Notification of incidents) applies, proceedings for the offence may be instituted:
  - (a) within 2 years after the occurrence of the work incident, or
  - (b) within 6 months after WorkCover first becomes aware of the work incident,whichever provides the longer period to institute proceedings.
- (2) It is to be conclusively presumed for the purposes of this section that WorkCover does not become aware of a work incident until whichever of the following happens first:
  - (a) notice of the incident is given in compliance with section 86, whether or not that notice is given within the time required under that section,
  - (b) WorkCover gives the employer or occupier concerned notice in writing that is expressed to be notice for the purposes of this section and indicates that WorkCover has become aware of the incident.
- (3) The Chief Executive Officer of WorkCover may for the purposes of this section give a certificate in writing certifying as to when WorkCover first became aware of a work incident as provided by this section.
- (4) Proceedings for an offence against this Act or the regulations cannot be instituted under this section more than 2 years after the occurrence of the work incident unless the Chief Executive Officer of WorkCover has certified in writing that the proceedings are in the public interest.
- (5) A certificate given by the Chief Executive Officer of WorkCover under this section is conclusive evidence as to the matters certified and cannot be challenged, reviewed or called into question in any proceedings before any court or tribunal.
- (6) For the purposes of the application of this section to a mine, a reference in this section to section 86 is to be read as a reference:
  - (a) in the case of a mine to which the *Mines Inspection Act 1901* applies—to section 47 of that Act or to such other provision of that Act as may be prescribed by the

regulations, or

(b) in the case of a mine to which the *Coal Mines Regulation Act 1982* applies—to section 86 of that Act or to such other provision of that Act as may be prescribed by the regulations.

(7) This section applies despite anything in any other Act.

### **108 Penalty notices for certain offences**

- (1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence under this Act or the regulations, being an offence prescribed by the regulations.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter dealt with by a court, the person may pay, within the time and to the person specified in the notice, the amount of penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice may be served personally or by post.
- (4) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment under this section is not to be regarded as an admission of liability for the purpose of, nor in any way as affecting or prejudicing, any civil claim, action or proceedings arising out of the same occurrence.
- (6) The regulations may:
  - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
  - (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and
  - (c) prescribe different amounts of penalties for different offences or classes of offences, and
  - (d) prescribe different amounts of penalties for the same penalty notice offence.
- (7) The amount of a penalty prescribed under this section for an offence must not exceed the maximum amount of penalty which could be imposed for the offence by a court.
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings which may be taken in respect of offences.
- (9) In this section:

**authorised officer** means:

- (a) an inspector, or
- (b) a person declared by the regulations to be an authorised officer for the purposes of this section.

### **109 Evidentiary statements**

In a prosecution for an offence against this Act or the regulations, a statement, purporting to be signed by the Chief Executive Officer of WorkCover or other prescribed person, relating to:

- (a) a notification of an incident or other matter required to be notified by or under this Act, or
- (b) a certificate, licence or permit issued under a provision of the regulations, or
- (c) any other prescribed matter contained in a prescribed official document concerning occupational health and safety,

and certifying that the contents of the statement are in accordance with the particulars contained in the document, is admissible in any proceedings and is evidence of the matters contained in the statement without proof of the signature of the person by whom the statement purports to have been signed.

### **110 Onus of proof concerning reasonable excuse**

In any proceedings for an offence against a provision of this Act or the regulations, the onus of proving that a person had a reasonable excuse (as referred to in the provision) lies with the defendant.

**Note—**

Provisions relating to victim impact statements with respect to proceedings for offences against this Act or the regulations are contained in Part 3 of the [Crimes \(Sentencing Procedure\) Act 1999](#). That Act also contains other provisions relating to sentencing for those offences.

## **Division 2 Court orders in connection with offences**

### **111 Operation of Division**

- (1) **Application to proved offences** This Division applies where a court finds an offence against this Act or the regulations proved.
- (2) **Meaning of proved offences** Without limiting the generality of subsection (1), a court finds an offence proved if:
  - (a) the court convicts the offender of the offence, or
  - (b) the court makes an order under section 10 of the [Crimes \(Sentencing Procedure\)](#)

[Act 1999](#) against the offender in relation to the offence.

(3) **Definitions** In this Division:

**the court** means the court that finds the offence proved.

**the offender** means the person who is found to have committed the offence.

### **112 Orders generally**

- (1) **Orders may be made** One or more orders may be made under this Division against the offender.
- (2) **Orders are additional** Orders may be made under this Division in addition to any penalty that may be imposed or any other action that may be taken in relation to the offence.

### **113 Orders for restoration**

- (1) The court may order the offender to take such steps as are specified in the order, within the period so specified, to remedy any matter caused by the commission of the offence that appears to the court to be within the offender's power to remedy.
- (2) The period in which an order under this section must be complied with may be extended, or further extended, by order of the court but only if application for such an extension is made before the end of that period.

### **114 Orders regarding costs and expenses of investigation**

- (1) The court may, if it appears to the court that WorkCover has reasonably incurred costs and expenses during the investigation of the offence, order the offender to pay to WorkCover the costs and expenses so incurred in such amount as is fixed by the order.
- (2) An order made by the Industrial Relations Commission under this section is enforceable under section 182 of the [Industrial Relations Act 1996](#). An order made by a Local Court under this section is enforceable as if it were an order made by the Local Court when exercising jurisdiction under the [Local Courts \(Civil Claims\) Act 1970](#).
- (3) In this section:

**costs and expenses**, in relation to the investigation of an offence, means the costs and expenses in conducting any examination or test of anything during the investigation of the offence.

#### **Note—**

See section 122 of the [Fines Act 1996](#) for orders requiring part of the fine imposed for an offence to be paid to the prosecutor.

### **115 Orders to publicise or notify offence**

- (1) The court may do any one or more of the following:
  - (a) order the offender to take specified action to publicise the offence, its consequences, the penalty imposed and any other related matter,
  - (b) order the offender to take specified action to notify specified persons or classes of persons of the offence, its consequences, the penalty imposed and any other related matter (including, for example, the publication in an annual report or any other notice to shareholders of a company or the notification of persons aggrieved or affected by the offender's conduct).
- (2) The court may, in an order under this section, fix a period for compliance and impose any other requirements the court considers necessary or expedient for enforcement of the order.
- (3) If the offender fails to comply with an order under this section, the prosecutor or a person authorised by the prosecutor may take action to carry out the order as far as may be practicable, including action to publicise or notify:
  - (a) the original contravention, its consequences, the penalty imposed and any other related matter, and
  - (b) the failure to comply with the order.
- (4) The reasonable cost of taking action referred to in subsection (3) is recoverable by the prosecutor or person taking the action, in a court of competent jurisdiction, as a debt from the offender.

### **116 Orders to undertake OHS projects**

- (1) The court may order the offender to carry out a specified project for the general improvement of occupational health, safety and welfare.
- (2) The court may, in an order under this section, fix a period for compliance and impose any other requirements the court considers necessary or expedient for enforcement of the order.
- (3) A Local Court may not make an order under this section unless it is satisfied that the cost of complying with the order does not exceed the jurisdictional limit of a Local Court when sitting in its General Division within the meaning of the [Local Courts Act 1982](#).

### **117 Offence: failure to comply with order**

- (1) A person who, without reasonable excuse, fails to comply with an order under this Division is guilty of an offence.



Maximum penalty:

- (a) in the case of a corporation (being a previous offender)—1,500 penalty units, or
- (b) in the case of a corporation (not being a previous offender)—1,000 penalty units, or
- (c) in the case of an individual (being a previous offender)—375 penalty units, or
- (d) in the case of an individual (not being a previous offender)—250 penalty units.

(2) This section does not apply to an order under section 114 (Orders regarding costs and expenses of investigation).

### **Division 3 Proceedings against the Crown and government agencies**

#### **118 Act to bind Crown**

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

#### **119 Criminal proceedings against the Crown and agents of the Crown**

- (1) The Crown in any capacity may be prosecuted for an offence against this Act or the regulations.
- (2) The Crown in any capacity may be served with a penalty notice in connection with an alleged offence against this Act or the regulations.
- (3) In the case of an offence against this Act or the regulations committed or alleged to have been committed by an agency of the Crown that is a corporation:
  - (a) the corporation and not the Crown may be prosecuted for the offence, and
  - (b) the corporation and not the Crown may be served with a penalty notice.

**Note—**

See section 123 for proceedings against successors of corporate agents of the Crown. The other provisions of this Act relating to corporations apply in respect of proceedings against corporate agents of the Crown.

- (4) For the purposes of this Division, **proceedings against the Crown** are proceedings to which this section applies (other than those against an agency of the Crown that is a corporation).
- (5) Proceedings against the Crown in right of New South Wales may be brought or taken under the title “State of New South Wales”.

#### **120 Responsible agency for the purposes of proceedings against the Crown**

- (1) The **responsible agency** for the purposes of proceedings against the Crown is the

agency of the Crown:

- (a) whose acts or omissions are alleged to constitute the offence, or
  - (b) if that agency has ceased to exist—that is the successor of that agency, or
  - (c) if that agency has ceased to exist and there is no clear successor—that the court declares to be the responsible agency.
- (2) The responsible agency is to be specified in the charge for an offence for which the Crown is prosecuted or in any penalty notice served on the Crown. The responsible agency may, during any proceedings for an offence, be changed by the prosecutor with the leave of the court.
  - (3) The responsible agency is entitled to act for the Crown in proceedings against the Crown.
  - (4) Subject to any relevant rules of court, the procedural rights and obligations of the Crown as the accused in the proceedings are conferred or imposed on the responsible agency.
  - (5) For the purposes of this section, a State owned corporation is taken to be an agency of the Crown in right of New South Wales.

### **121 Penalties in respect of proceedings against the Crown**

- (1) In this section, **penalty** means:
  - (a) the monetary penalty for an offence against this Act or the regulations, or
  - (b) the amount payable under a penalty notice served in connection with such an offence, or
  - (c) the amount payable under an order made under Division 2.
- (2) The penalty in respect of proceedings against the Crown is the penalty applicable in respect of offences committed by a corporation.
- (3) If that penalty differs for previous offenders, the Crown is a previous offender in relation to particular proceedings against the Crown only if the Crown is a previous offender in respect of the acts or omissions of the same responsible agency of the Crown (or any predecessor of that agency).
- (4) Enforcement proceedings under the *Fines Act 1996* cannot be taken in connection with penalties imposed in respect of proceedings against the Crown.

### **122 Investigation, improvement or prohibition notices in connection with the Crown**

- (1) Investigation or improvement notices may be issued in respect of any activity of or

controlled by the Crown and prohibition notices may be issued in respect of any contravention of this Act or the regulations by the Crown.

- (2) Any such notice may be served on the agency that would be the responsible agency if the Crown were prosecuted for an offence with respect to that activity or that contravention.

### **123 Proceedings against successors of government corporations**

- (1) In this section, **government corporation** means:
- (a) a corporation that is an agent of the Crown, or
  - (b) a State owned corporation, or
  - (c) a corporation that is an area health service or statutory health corporation within the meaning of the *Health Services Act 1997*, or
  - (d) a local council or county council, or
  - (e) a public or local authority that is declared by the regulations to be a government corporation for the purposes of this section.
- (2) Proceedings for an offence against this Act or the regulations that were instituted against a government corporation before its dissolution, or that could have been instituted against a government corporation but for its dissolution, may be continued or instituted against its successor if the successor is a government corporation.
- (3) Subsection (2) extends to proceedings that could have been instituted against a government corporation because of the operation of that subsection.
- (4) A penalty notice served on a government corporation for an offence against this Act or the regulations or any penalty paid by a government corporation in respect of such a penalty notice:
- (a) is taken to be a penalty notice served on its successor if the successor is a government corporation, or
  - (b) is taken to be a penalty paid by any such successor,
- as the case requires.

## **Division 4 Sentencing guidelines**

### **124 Definitions**

In this Division:

**Full Bench** means the Full Bench of the Industrial Relations Commission in Court Session.

**guideline judgment** means a judgment of the Full Bench containing guidelines to be taken into account by the Industrial Relations Commission in Court Session, a Local Court, the District Court or the Supreme Court in sentencing persons convicted of an offence being:

- (a) guidelines that apply generally, or
- (b) guidelines that apply to particular courts (or the Industrial Relations Commission in Court Session) or classes of courts, to particular offences or classes of offences, to particular penalties or classes of penalties or to particular classes of persons convicted of an offence (but not to particular persons).

**guideline proceedings** means proceedings under section 125 on an application for a guideline judgment referred to in that section.

**offence** means an offence under this Act, the regulations or the associated occupational health and safety legislation.

**State peak council** has the meaning that it has in the [Industrial Relations Act 1996](#).

## **125 Guideline judgments on application of Attorney General**

- (1) The Full Bench may give a guideline judgment on application of the Attorney General.
- (2) An application for a guideline judgment may include submissions with respect to the framing of the guidelines.
- (3) An application is not to be made in any proceedings before the Full Bench with respect to any particular person.
- (4) The powers and jurisdiction of the Full Bench to give a guideline judgment in proceedings under this section in relation to an offence are the same as the powers and jurisdiction that the Court of Criminal Appeal has to give a guideline judgment in a proceeding under section 37A of the [Crimes \(Sentencing Procedure\) Act 1999](#).
- (5) A guideline judgment under this section may be given separately or may be included in any judgment of the Full Bench that it considers appropriate.

## **126 Peak councils may intervene**

- (1) A State peak council, or a representative of a State peak council who is a legal practitioner, may appear in guideline proceedings.
- (2) Without limiting subsection (1), a State peak council or its representative may do either or both of the following:
  - (a) make submissions with respect to the framing of the guidelines,
  - (b) assist the Full Bench with respect to any relevant matter.

### **127 Full Bench may give persons or organisations leave to appear**

- (1) The Full Bench may grant leave to any person, organisation or government department or agency (or a representative of any person, organisation, department or agency who is a legal practitioner) to appear in guideline proceedings.
- (2) Without limiting subsection (1), any person, organisation, government department or agency that is granted leave to appear (or its representative, if any) may do either or both of the following:
  - (a) make submissions with respect to the framing of the guidelines,
  - (b) assist the Full Bench with respect to any relevant matter.
- (3) This section does not apply to State peak councils.

### **128 Alteration of guideline judgments**

A guideline judgment given in proceedings under this Division may be reviewed, varied or revoked in a subsequent guideline judgment of the Full Bench, whether made under this Division or apart from it.

### **129 Discretion of Full Bench preserved**

Nothing in this Division:

- (a) limits any power or jurisdiction of the Full Bench to give a guideline judgment that the Full Bench has apart from this Division, or
- (b) requires the Full Bench to give any guideline judgment under this Division if it considers it inappropriate to do so.

### **130 Rules of Industrial Relations Commission**

Rules of the Industrial Relations Commission may be made under the [Industrial Relations Act 1996](#) with respect to applications, and proceedings to determine applications, under this Division.

### **131 Use of evidence in giving guideline judgments**

- (1) Nothing in section 12 of the [Criminal Appeal Act 1912](#) or in section 163 (2) of the [Industrial Relations Act 1996](#) limits the evidence or other matters that the Full Bench may take into consideration in giving a guideline judgment (whether or not on an application under this Division) and the Full Bench may inform itself as it sees fit.
- (2) The Full Bench must not increase a sentence in any appeal by reason of, or in consideration of, any evidence that is used by the Full Bench in giving a guideline judgment in the appeal but was not given in the original proceedings.

## Part 8 Miscellaneous

### 132 Application of associated occupational health and safety legislation

- (1) Subject to this section, the provisions of the associated occupational health and safety legislation are to be observed in addition to the provisions of this Act and the regulations.
- (2) Except as provided by subsection (3), 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 prevails.
- (3) A person is not guilty of an offence under Part 2 in respect of any act or omission that is expressly required or permitted to be done or omitted by or under the associated occupational health and safety legislation.
- (4) 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 is not liable to be punished twice in respect of the offence.

### 133 Application of Act to mines: references to WorkCover

The regulations may provide that a reference in any provision of this Act to WorkCover, or to an officer of WorkCover, in connection with the application of the provision to a mine, is taken to be or include a reference to a specified government department or agency, or an officer of a government department or agency, exercising functions in connection with the administration of the [Mines Inspection Act 1901](#) or the [Coal Mines Regulation Act 1982](#), or a reference to the Minister administering any of those Acts.

**Note—**

See, for example, Division 2 of Part 2 (Duty to consult), Part 4 (Industry codes of practice), and section 114 (Orders regarding costs and expenses of investigation).

### 134 Application of Act to police officers

To avoid doubt, a police officer is, for the purposes of this Act:

- (a) an employee of the Crown, and
- (b) at work throughout the time when the officer is on duty, but not otherwise.

### 135 Plant affecting public safety—extension of Act

- (1) In this section:

***plant affecting public safety*** means any plant (including but not limited to plant of

the following kinds) that is prescribed by the regulations as plant affecting public safety, whether or not the plant is at a place of work or for use at work:

- (a) boilers and pressure vessels,
  - (b) escalators, lifts and moving walks,
  - (c) scaffolding.
- (2) The following provisions of this Act extend to plant affecting public safety even though the plant is not at a place of work or is not for use at work:
- (a) Division 4 of Part 2 (Ancillary provisions),
  - (b) Part 3 (Regulations) and Part 4 (Industry codes of practice),
  - (c) Divisions 1, 2 and 4 of Part 5 (Investigations) and Part 6 (Investigation, improvement and prohibition notices).
- (3) For the purposes of the application of those provisions:
- (a) a reference to work includes a reference to operating any plant affecting public safety, and
  - (b) a reference to a place of work includes a reference to any plant affecting public safety and the premises at or in which the plant is situated or used, and
  - (c) a reference to occupational health and safety includes a reference to public health and safety.
- (4) This section does not affect the application of this Act to plant affecting public safety apart from the operation of this section.

### **135A Dangerous goods—extension of Act**

- (1) In this section:

***dangerous goods*** means:

- (a) substances or articles subject to a national standard declared by the National Occupational Health and Safety Commission under section 38 of the *National Occupational Health and Safety Commission Act 1985* of the Commonwealth, and
- (b) any other substances or articles that are a risk to public safety.

***handling***, in relation to dangerous goods, includes conveying, manufacturing, processing, possessing, using, preparing for use, treating, dispensing, packing, selling, offering for sale, supplying, transferring, loading and unloading, rendering harmless, abandoning, destroying and disposing of dangerous goods.

**storing** includes storing as a bailee or in any other capacity.

- (2) The regulations may declare that specified dangerous goods (whether or not at a place of work) are dangerous goods to which this section applies. Any such declaration may provide that those substances or articles are not dangerous goods to which this section applies at premises that are not a place of work unless the quantity of those goods at those premises exceeds a minimum quantity prescribed by the regulations.
- (3) The following provisions of this Act extend to dangerous goods to which this section applies even though the goods are not at a place of work or are not for use at work:
  - (a) Division 4 (Ancillary provisions) of Part 2,
  - (b) Part 3 (Regulations) and Part 4 (Industry codes of practice),
  - (c) Divisions 1, 2 and 4 of Part 5 (Investigations) and Part 6 (Investigation, improvement and prohibition notices).
- (4) For the purposes of the application of those provisions:
  - (a) a reference to work includes a reference to storing or handling dangerous goods to which this section applies, and
  - (b) a reference to a place of work includes a reference to the premises at or in which the dangerous goods to which this section applies are stored or handled, and
  - (c) a reference to occupational health and safety (however expressed) includes a reference to public health and safety.
- (5) This section does not affect the application of this Act to dangerous goods apart from the operation of this section.

**136 Offence of obstructing or intimidating inspectors and others exercising functions under Act**

- (1) A person must not:
  - (a) obstruct, hinder or impede any authorised official in the exercise of the official's functions under this Act, or
  - (b) intimidate or threaten or attempt to intimidate any authorised official in the exercise of the official's functions under this Act.

Maximum penalty:

- (a) in the case of a corporation (being a previous offender)—750 penalty units, or
- (b) in the case of a corporation (not being a previous offender)—500 penalty units, or
- (c) in the case of an individual (being a previous offender)—225 penalty units, or



(d) in the case of an individual (not being a previous offender)—150 penalty units.

(2) In this section:

**authorised official** means an inspector, an authorised representative (within the meaning of Division 3 of Part 5), a member of an OHS committee, an OHS representative or other person authorised to exercise functions under this Act or the regulations.

### **137 Disclosure of information by inspectors and others**

(1) A person who is, or was at any time, an authorised official exercising functions under this Act must not disclose any information relating to any manufacturing or commercial secrets or working processes that was obtained by the authorised official in connection with the administration or execution of this Act (including the exercise of any function under this Act).

Maximum penalty: 20 penalty units.

(2) Subsection (1) does not operate to prevent the disclosure of information where that disclosure is:

- (a) made in connection with the administration or execution of this Act (including the exercise of any function under this Act), or
- (b) made with the prior permission of the Minister, or
- (c) ordered by a court, or by any other body or person authorised by law to examine witnesses, in the course of, and for the purpose of, the hearing and determination by that court, body or person of any matter or thing.

(3) The Minister may grant the permission referred to in subsection (2) (b) only if the Minister is satisfied that to do so would be in the public interest.

(4) In this section:

**authorised official** means an inspector, an authorised representative (within the meaning of Division 3 of Part 5), a member of an OHS committee, an OHS representative or other person authorised to exercise functions under this Act or the regulations.

**this Act** includes the [Occupational Health and Safety Act 1983](#).

### **137A Delegation of functions in relation to mines by Minister**

(1) The Minister may delegate to the Director-General any of the following functions of the Minister:

- (a) any function under section 47A, or

(b) any function under this Act that is to be exercised by the Minister as a result of a regulation under section 133 that provides that a reference to WorkCover in a particular provision of this Act is to be read as a reference to the Minister.

- (2) The Director-General may delegate to any authorised person any function of the Director-General under this Act, other than this power of delegation.
- (3) The Director-General may subdelegate to any authorised person any function delegated to the Director-General by the Minister if the Director-General is authorised to do so by the Minister.

(4) In this section:

**authorised person** means a public servant, or any other person authorised by the regulations.

**Director-General** means the Director-General of the Department of Mineral Resources.

### **138 Notes**

Notes in the text of this Act do not form part of this Act.

### **139 Repeals**

- (1) The Acts specified in Schedule 1 are repealed.
- (2) Different days may be appointed for the commencement of Schedule 1 for the purpose of repealing different Acts or different provisions of an Act on different days.

### **140 (Repealed)**

### **141 Savings, transitional and other provisions**

Schedule 3 has effect.

### **142 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

## Schedule 1 Repeals

(Section 139)

*Construction Safety Act 1912 No 38*

*Occupational Health and Safety Act 1983 No 20*

*Occupational Health and Safety Amendment Act 1997 No 51*

*Occupational Health and Safety Amendment (Sentencing Guidelines) Act 2000 No 9*

## Schedule 2 (Repealed)

## Schedule 3 Savings, transitional and other provisions

(Section 141)

## Part 1 Regulations

### 1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

this Act

*Mining Legislation Amendment (Health and Safety) Act 2002*

*Occupational Health and Safety Amendment (Dangerous Goods) Act 2003*

*Occupational Health and Safety Amendment (Prosecutions) Act 2003*

*Workers Compensation and Other Legislation Amendment Act 2004* (but only to the extent that it amends this Act)

*Occupational Health and Safety Amendment (Workplace Deaths) Act 2005*

*Industrial Relations Further Amendment Act 2006* (but only to the extent that it amends this Act)

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its

publication.

## **Part 2 Provisions consequent on enactment of this Act**

### **Division 1 Preliminary**

#### **2 Definitions**

In this Part:

**commencement of this Act** means, if this Act commences on different days, the day on which the relevant provision of this Act commences.

**former Act** means the *Occupational Health and Safety Act 1983*.

### **Division 2 Regulations under repealed Acts**

#### **3 Repeal of regulations**

Each of the following regulations is repealed, on the date appointed under this Act for the commencement of this clause in respect of the regulation concerned:

- (a) each regulation made under the former Act,
- (b) the following regulations under the *Factories, Shops and Industries Act 1962*:

*Abrasive Blasting Regulations*

*Boiler and Pressure Vessel Regulations*

*Chaff-cutting Machines (Safety) Regulation 1980*

*Engine Drivers and Boiler Attendants Certification Regulations*

*Explosive-powered Tool Regulations*

*Factories (Health and Safety—Asbestos Processes) Regulation 1984*

*Factories (Health and Safety—Circular Saws) Regulations 1943*

*Factories (Health and Safety—Dipping in Flammable Solutions) Regulation 1976*

*Factories (Health and Safety) Electroplating Regulation 1988*

*Factories (Health and Safety—Furnaces) Regulation 1983*

*Factories (Health and Safety) General Regulations 1913*

*Factories (Health and Safety—Spray Painting) Regulation 1977*

*Foundry Regulations*

*Lead Regulations*

*Local Government Industries (Machine Safety) Regulation*

*Locomotive Regulations*

*Rural Industries (Machine Safety) Regulations*

*Timber Industry (Health and Safety) Regulation 1982*

*Welding Regulations*

(c) the *Construction Safety Regulations 1950* under the *Construction Safety Act 1912*.

#### **4 Saving of regulations pending their repeal**

- (1) This clause applies if the provision of the Act under which any such regulation is made is repealed before the date appointed for the repeal of the regulation.
- (2) Pending the repeal of any such regulation, the regulation is, to the extent that it could legally be made under this Act, taken to be a regulation made under this Act.

#### **5 Temporary preservation of regulation-making powers under repealed associated legislation**

Until the end of the period of 3 years after the repeal by this Act of any provision of an Act, regulations may be made under this Act for or with respect to any matter contained in that provision or any matter that could have been prescribed by regulation under that provision (but for its repeal).

#### **6 Staged repeal under [Subordinate Legislation Act 1989](#) of regulations to be repealed by this Part**

A regulation that is to be repealed by this Part is taken not to be repealed by section 10 of the [Subordinate Legislation Act 1989](#).

### **Division 3 Miscellaneous provisions**

#### **7 Associated legislation**

Pending the repeal of any provision of an Act or regulation by this Act that was associated occupational health and safety legislation under the former Act, the provision is taken to be associated occupational health and safety legislation for the purposes of this Act.

#### **8 OHS committees etc**

- (1) An occupational health and safety committee established under section 23 of the former Act is, subject to the regulations, taken to be an OHS committee established under Division 2 of Part 2 of this Act.

- (2) The regulations may provide for the staged implementation of the duties imposed under Division 2 of Part 2 of this Act.

## 9 Industry codes of practice

An industry code of practice approved and in force under Part 4A of the former Act immediately before the repeal of that Act is taken to be an approved industry code of practice under Part 4 of this Act.

## 10 Improvement or prohibition notices

- (1) An improvement notice may be issued under this Act in respect of a contravention of the former Act or the regulations under the former Act that occurred before the commencement of this Act.
- (2) An improvement notice or prohibition notice issued under the former Act and in force on the commencement of this Act is taken to be an improvement notice or prohibition notice issued under this Act.
- (3) Any appeal, review or other proceeding pending under the former Act with respect to an improvement notice or prohibition notice issued under the former Act, or a notice issued under section 21B, 21C or 31Z of the former Act, is taken to be a proceeding pending under the corresponding provision of this Act.

## 11 Inspectors

- (1) A person appointed as an inspector under Division 4 of Part 3 of the former Act and holding office on the repeal of the former Act is taken to be appointed as an inspector under this Act, subject to the regulations under this Schedule.
- (2) A written authority issued to the inspector under section 31C of the former Act is taken to be an identification card issued under this Act until its replacement under this Act, and may be used by the inspector even though it refers to provisions of the former Act.
- (3) A reference in any other Act, in an instrument made under any Act or in any document of any kind to a former inspector is to be construed as a reference to an inspector under this Act. In this subclause, **former inspector** means:
  - (a) an inspector appointed under Division 4 of Part 3 of the former Act, or
  - (b) an inspector appointed under the [Factories, Shops and Industries Act 1962](#), or
  - (c) an inspector appointed under the [Construction Safety Act 1912](#).

## 12 Investigative powers and related matters

- (1) Part 5 (Investigations) extends to the exercise of powers in connection with the former Act or a regulation under the former Act in respect of offences committed against the

former Act or the regulation before its repeal or in respect of any other matter that continues to have any force or effect (except as provided by or under this Schedule).

- (2) In subclause (1), **former Act** includes any Act or provision of an Act that is repealed by this Act.
- (3) Section 88 applies to any report prepared or made public under section 31AQ of the former Act.

### **13 Criminal and other proceedings for offences under former Act**

- (1) Part 7 (Criminal and other proceedings) extends (subject to this clause) to proceedings in connection with the former Act in respect of offences committed against the former Act before its repeal or in respect of any related matter that continues to have force or effect.
- (2) This clause applies whether any such proceedings are pending on the repeal of the former Act or whether the proceedings are instituted after that repeal.
- (3) Part 7 applies with such modifications as are prescribed by the regulations or as are necessary for the purposes of applying that Part to any such proceedings.
- (4) Division 3 of Part 7 does not authorise any such proceedings against the Crown or any agent of the Crown if those proceedings would not have been authorised under the former Act.
- (5) In this clause, **former Act** includes any Act or provision of an Act that is repealed by this Act.

### **14 Sentencing guidelines**

An application for a guideline judgement pending under Part 7 of the former Act on the repeal of that Part, and any guideline judgement given under that Part, is taken to be an application for a guideline judgement pending under Division 4 of Part 7 of this Act or a guideline judgement given under that Division, as the case requires.

### **15 Existing notices, exemptions etc**

- (1) A notice, direction, order, requirement or exemption that:
  - (a) is given, issued or made under the former Act, and
  - (b) is in force on the repeal of the former Act,has effect for the purposes of any corresponding provision of or made under this Act, unless this Act or the regulations otherwise provide.
- (2) In this clause, **former Act** includes any Act or provision of an Act that is repealed by this Act.

## 16 Victim impact statements

The amendments made by this Act to the *Crimes (Sentencing Procedure) Act 1999* do not apply to proceedings instituted before the commencement of those amendments.

## 17 General saving

Any thing done under an Act or a provision of an Act repealed by this Act that has any force or effect immediately before its repeal is taken to have been done under the corresponding provision of this Act, subject to any express or implied provision to the contrary in this Act or the regulations made under this Act.

## Part 3 Provisions consequent on enactment of Occupational Health and Safety Amendment (Prosecutions) Act 2003

### 18 Definitions

In this Part:

**amending Act** means the *Occupational Health and Safety Amendment (Prosecutions) Act 2003*.

**former Act** means the *Occupational Health and Safety Act 1983*.

**proceedings** includes purported proceedings.

**terminated** includes stayed, dismissed or not proceeded with for any other reason (including nullity).

### 19 Application of amendments to offences

- (1) Section 106, as amended by the amending Act, extends to proceedings relating to offences under this Act or the regulations committed before the commencement of the amending Act.
- (2) Section 106, as amended by the amending Act, extends (by the operation of clause 13) to proceedings relating to offences under the former Act or regulations under that Act.
- (3) This clause applies whether any proceedings referred to in this clause were or are instituted before, on or after the commencement of the amending Act or are pending on that commencement.
- (4) In the case of proceedings instituted under section 48 of the former Act before that commencement, section 48 (1) (a) of that Act is to be construed as if a reference to the Minister in that paragraph was and always had been a reference to any Minister of the Crown.
- (5) In the case of any proceedings referred to in this clause that were instituted before



that commencement, any such proceedings are taken to have been validly instituted, and to have always been validly instituted, if they were consented to by a Minister of the Crown.

## 20 Terminated proceedings

- (1) This clause applies to proceedings terminated in the Industrial Relations Commission before the commencement of the amending Act if:
  - (a) the proceedings related to alleged offences under this Act or the former Act or the regulations under those Acts, and
  - (b) the proceedings were consented to by a Minister of the Crown and were terminated merely because the proceedings were invalidly instituted, and
  - (c) the proceedings would have been taken to have been validly instituted if the amending Act had commenced before the proceedings were terminated.
- (2) Any such proceedings may be recommenced, on the basis of the applications and other documents by which those proceedings were last commenced and without any further consent being required, whether or not the time for commencing such proceedings has expired under this or any other Act and despite any changes to the manner of commencing proceedings since they were last commenced.
- (3) If any terminated proceedings are recommenced, any thing done in the terminated proceedings (other than the termination of the proceedings) is taken to have been done in the recommenced proceedings.

## Part 4 Provisions consequent on enactment of **Workers Compensation and Other Legislation Amendment Act 2004**

### 21 Time for instituting proceedings

Section 107A, as inserted by the *Workers Compensation and Other Legislation Amendment Act 2004*, does not apply to or in respect of a work incident (within the meaning of that section) that occurred before the commencement of that section.

## Part 5 Provision relating to **Occupational Health and Safety Amendment (Workplace Deaths) Act 2005**

### 22 Law Reform Commission review of **Occupational Health and Safety Amendment (Workplace Deaths) Act 2005**

- (1) The Law Reform Commission is to inquire into, and report on, the effectiveness of the provisions inserted into the *Occupational Health and Safety Act 2000* and the *Criminal Appeal Act 1912* by the *Occupational Health and Safety Amendment (Workplace Deaths) Act 2005* (**the relevant provisions**).

- (2) The Law Reform Commission in carrying out that inquiry, and making that report, is to have particular regard to:
  - (a) whether the relevant provisions are achieving their aims and objectives, and
  - (b) whether the relevant provisions are appropriate to achieve those aims and objectives, and
  - (c) the incidence and circumstances of workplace deaths in New South Wales since the enactment of the relevant provisions and whether the relevant provisions have contributed to a reduction in workplace deaths in New South Wales, and
  - (d) any deficiencies with the relevant provisions that have become apparent since their enactment, and
  - (e) provisions relating to workplace deaths in other Australian jurisdictions and their operation and effectiveness.
- (3) The Law Reform Commission in carrying out that inquiry, and making that report, is to:
  - (a) consult with unions, employees, employers and other interested stakeholders, and
  - (b) conduct public hearings.
- (4) The inquiry and report is to be undertaken under and in accordance with the [Law Reform Commission Act 1967](#).
- (5) The inquiry is to commence before the expiration of the period of 3 years after the commencement of the relevant provisions.
- (6) The Attorney General is required to table or cause to be tabled in Parliament the report, and a detailed written response of the Government, within 3 months after the report is made by the Law Reform Commission.