

# Construction Safety Act 1912 No 38

[1912-38]



New South Wales

## Status Information

### Currency of version

Repealed version for 1 March 1999 to 31 August 2001 (accessed 22 December 2024 at 22:18)

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—

- **Previously named**  
Scaffolding and Lifts Act 1912
- **Does not include amendments by**  
[Regulatory Reduction Act 1996 No 107](#) (not commenced)
- **Note**  
The Act was to be repealed by Sch 2.1 to the [Occupational Health and Safety Amendment Act 1997 No 51](#) but was repealed by the [Occupational Health and Safety Act 2000 No 40](#), Sch 1 with effect from 1.9.2001.

### 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 September 2001

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# Construction Safety Act 1912 No 38



New South Wales

An Act to provide for the regulation and inspection of construction work and to consolidate the Acts controlling scaffolding and lifts.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Construction Safety Act 1912*.

### 1A Division of Act

This Act is divided as follows:

Part 1—Preliminary—sections 1-5A

Part 2—Notification of certain work—sections 6-10

Part 3—Inspection—sections 13-16

Part 4—Certificates of competency—sections 17-17B

Part 5—Miscellaneous—sections 18-22

First Schedule

### 2 Repeals and savings

- (1) The Acts mentioned in the First Schedule are hereby repealed.
- (2), (3) (Repealed)
- (4) All regulations duly made under the Acts hereby repealed, and in force at the time of the passing of this Act, shall be deemed to have been duly made under the provisions of this Act, and as if this Act had been in force when the same were made.
- (5) All notices, orders, and authorities duly given, and all certificates duly granted, and all acts and things duly done under the Acts hereby repealed and in force, existing, or operating at the time of the passing of this Act, shall continue to be of the same force and effect as if this Act had been in force at the time the same were respectively

given, granted, or done, and they had been given, granted, or done under the corresponding provisions of this Act, and this Act shall apply to them accordingly.

### 3 Definitions

(1) In this Act, unless the context or subject-matter otherwise requires:

**Amusement device** means anything mobile or fixed made available to members of the public on which, or on any part of which, or by means of which, they may ascend or descend, or be carried, transported, raised, lowered or supported for the purposes of amusement, games, recreation, sightseeing or entertainment but does not include:

(a) anything that:

- (i) is not power-operated, or
- (ii) may only be operated by manual power,

unless a fee is payable for its use, or for entry therein or thereon, or for entry to the place where it is situated,

(b) a conveyor, crane, escalator, hoist, lift or moving walk,

(c) a railway system in so far as it uses a locomotive for its motive power and has a track gauge of 600 mm or more,

(d) a registrable vehicle within the meaning of the [Road Transport \(Vehicle Registration\) Act 1997](#),

(e) a vessel used on waters navigable for the purpose of trade,

(f) an aircraft subject to the regulations made under the [Air Navigation Act 1920](#) of the Parliament of the Commonwealth and any Act amending or replacing that Act, or

(g) anything prescribed as being excluded from this definition.

**Authority** means the WorkCover Authority constituted under the [WorkCover Administration Act 1989](#).

**Building work** means:

(a) work in constructing, erecting, installing, adding to, altering, repairing, equipping, finishing, painting, cleaning, signwriting, sheathing, spraying, dismantling or demolishing or any other prescribed operation that:

- (i) is done in relation to a building or structure, at or adjacent to the site thereof, or

(ii) is done in relation to a vessel on or adjacent to the vessel while it is at a wharf,

in dock or on slips, and

(b) work in lining any shaft, well or tunnel.

**Compressed air work** means work (other than diving work) done in, or in connection with, construction work or other prescribed work by a person while breathing any gas or mixture of gases at a greater pressure than atmospheric pressure.

**Construction work** means:

- (a) building work, excavation work, compressed air work and diving work,
- (b) work in or in connection with the construction or maintenance of roads, airfields or airstrips, or of the permanent way of a railway or tramway,
- (c) dredging or salvaging work,
- (d) the laying, lining or maintenance of pipes or cables,
- (e) earth moving carried out with equipment for or in connection with the operation of which power other than manual power is used,
- (f) land clearing in preparation for any work referred to in paragraph (a), (b), (d), or (e),
- (g) any work in which explosives are used, and
- (h) any other prescribed work.

**Constructor**, in relation to any construction work, means the person who by himself or herself (otherwise than as a servant or agent of the person carrying out that work) or by the person's servants or agents carries out that work.

**Conveyor** means apparatus or contrivance worked by any power other than manual by which goods are raised, lowered or transported or are capable of being raised, lowered or transported by means of:

- (a) an endless belt, rope or chain,
- (b) buckets, trays or other containers or fittings moved by an endless belt, rope or chain, or
- (c) a rotating screw,

and includes the supporting structure, machinery, equipment and gear used in connection with the conveyor.

**Crane** means grab crane, charging crane, excavator, power shovel, floating crane, cableway, overhead travelling crane, jib crane, derrick crane, locomotive crane,

cantilever crane, bridge or gantry crane, stripping crane, telfer crane, boom crane, tower crane, stacking crane, loading crane integral with a vehicle, elevating work platform, loader, monorail, fork lift truck and mobile crane and any other crane or apparatus or contrivance used or capable of being used for raising, lowering, handling or transporting loads in like manner, and includes the supporting structure and the gear used in connection with the crane, but does not include a conveyor, escalator, moving walk, hoist or lift.

**Diving work** means diving work done in, or in connection with, other construction work or other prescribed work.

**Escalator** means an apparatus or contrivance by which persons are, or are capable of being, raised or lowered while standing on the treads of an endless stairway, and includes the supporting structure, machinery, equipment and gear used in connection with any such apparatus or contrivance.

**Excavation work** means work involved in the excavation or filling of trenches, ditches, shafts, drifts, rises, tunnels, pier holes, cuttings, benches, wells or canals or any similar work.

**Explosive-powered tool** means a tool or device whereby a stud, pin, dowel, screw, rivet, spike or other object is driven against, into or through a substance by means of an explosive.

**Gear** means any gear or equipment, other than plant, used in connection with any conveyor, escalator, moving walk, crane, hoist, lift, scaffolding, plant, amusement device, public stand or construction work.

**Hoist** means sheerlegs, derrick pole, rope and pulley system, chain block, tripod hoist, construction hoist, vehicle towing hoist, pole erecting hoist, stacking machine, direct ram hoist, fixed hoist, whip hoist, skip hoist, inclined skid, inclined slipway, tower hoist, pile driver, tilter, or any machine used for or capable of being used for driving or pulling down any pile or any cylinder or casing used in connection with the forming of any pile, and includes the supporting structure and the gear used in connection with the hoist.

**Inspector** means an inspector appointed under the [Occupational Health and Safety Act 1983](#) to exercise functions under this Act.

**Lift** means any apparatus or contrivance by which persons or goods are raised or lowered or are capable of being raised or lowered within a cage or car, the direction of movement of which is restricted by a guide or guides and includes the supporting structure, machinery, equipment, gear and enclosures used in connection with the lift, but does not include conveyor, escalator, moving walk, crane or hoist (other than any personnel and materials hoist).

**Moving walk** means an apparatus or contrivance (other than an escalator) by which persons are, or are capable of being, transported while standing on a moving surface, and includes the supporting structure, machinery, equipment and gear used in connection with any such apparatus or contrivance.

**Owner** when used in relation to any conveyor, escalator, moving walk, crane, gear, hoist, lift, plant, amusement device, public stand, or scaffolding includes the owner, mortgagee in possession, lessee, hirer, or borrower thereof.

**Plant** means:

(a) any:

(i) machine or machinery driven by power other than manual power, and

(ii) air lock and welding equipment,

used or intended for use in construction work,

(b) the gear used in connection with, and the supporting structure of, anything referred to in paragraph (a), and

(c) any explosive powered tool,

but does not include a conveyor, escalator, moving walk, crane, hoist or lift.

**Power crane** means any crane driven by other than manual power.

**Power hoist** means any hoist driven by other than manual power.

**Prescribed** means prescribed by this Act or regulations made thereunder.

**Public stand** means a stand temporarily erected or temporarily set up to support:

(a) members of the public viewing or listening to, or

(b) performers or other participants taking part in,

a procession, concert, meeting, reception, performance, exhibition, carnival, gymkhana, rodeo, sporting contest, sporting display, athletic display, cinematographic, radio or television display or performance, or the like, and includes the supporting structure and access structures and the gear used in connection with the public stand.

**Regulation** means regulation made under this Act.

**Scaffolding** means:

(a) structure, staging, platform, framework, run, ramp, gangway, swinging stage or boatswain's chair set up or used for or in connection with:



- (i) the carrying out of construction work,
  - (ii) the erection, dismantling, repair or maintenance of machinery, plant or equipment, or
  - (iii) the erection or demolition of stacks of timber, goods or materials,
- (a1) building maintenance unit attached to a building and used for cleaning or other maintenance, and
- (b) form work set up or used for or in connection with the carrying out of construction work,

and includes the supporting structure, equipment, gear and machinery (if any) used in connection with the scaffolding.

**Supporting structure** means any structure, structural member or foundation (including any part of a building or its foundations) subject in any manner to direct or indirect loading as the result of the installation or use of scaffolding, a lift, conveyor, escalator, moving walk, crane, hoist, plant, amusement device or public stand.

**Vessel** means any ship, barge, pontoon or other construction designed to float.

(2) In this Act, a reference to:

- (a) an amusement device, includes a reference to:
  - (i) each part of the assembly, if any, comprising the device, and
  - (ii) any supporting structure, structure giving access to the device, machinery, equipment, gear, conveyance, platform, cage, seat or other thing used, designed for use, intended to be used or capable of being used in connection with the device, or
- (b) an explosive-powered tool, includes a reference to any attachment or device used or intended for use in connection with the tool.

#### **4 (Repealed)**

#### **4A Act not to apply to certain cranes, lifts, construction work etc**

(1) This Act shall not apply to:

- (a) any conveyor, escalator, moving walk, crane, gear (other than gear used in connection with an amusement device or public stand), hoist, lift, plant or scaffolding used wholly or principally at or in connection with any mine to which the [Mines Inspection Act 1901](#) or the [Coal Mines Regulation Act 1912](#) applies,
- (b) any construction work carried out in or about any mine to which the [Mines](#)

*Inspection Act 1901* or the *Coal Mines Regulation Act 1912* applies.

- (2) Notwithstanding subsection (1), this Act applies to:
- (a) any conveyor, escalator, moving walk, crane, gear, hoist, lift, plant or scaffolding used wholly or principally in, and
  - (b) any construction work carried out in,  
  
a mine or part of a mine for the time being exempted from the operation of the *Mines Inspection Act 1901* under the proviso to section 1 (2) of that Act.

#### **4B Act to bind Crown**

This Act shall bind the Crown.

#### **4C Fees to be paid into WorkCover Authority Fund**

Any fees paid under this Act or the regulations are to be paid into the WorkCover Authority Fund under the *WorkCover Administration Act 1989*.

#### **5 (Repealed)**

#### **5A Boards of Reference**

- (1) The Minister may, for the purposes of this Act, constitute such Boards of Reference as the Minister may deem necessary.

A Board of Reference may be constituted in respect of any industry, division of an industry, or combination, arrangement or group of industries.

- (2) A Board of Reference shall exercise and discharge the powers, authorities, duties and functions conferred and imposed upon it by or under this Act.
- (3) A Board of Reference shall consist of three members.

One of such members shall be the General Manager of the Authority who shall be the chairperson of each Board of Reference.

Of the other members of each Board of Reference:

- (a) one shall be appointed by the Minister from a panel of four persons nominated by the employers in the industry, division of an industry, or combination, arrangement or group of industries in respect of which the Board of Reference is constituted,
- (b) one shall be appointed by the Minister from a panel of four persons nominated by the industrial union or unions representing the employees in the industry, division of an industry, or combination, arrangement or group of industries in respect of which the Board of Reference is constituted.

- (4) Two members of a Board of Reference shall form a quorum.
- (5) The members of a Board of Reference shall be entitled to receive travelling expenses at such rate as the Minister may determine.

## **Part 2**

### **6-12 (Repealed)**

## **Part 3 Inspection**

### **13 Powers of entry of inspectors appointed under the [Occupational Health and Safety Act 1983](#)**

- (1) Section 31A of the [Occupational Health and Safety Act 1983](#) applies to any place (whether or not a place of work) that an inspector has reason to believe is:
  - (a) a lift, or
  - (b) an escalator, or
  - (c) a moving walk, or
  - (d) an amusement device, or
  - (e) a public stand, or
  - (f) scaffolding, or
  - (g) a supporting structure, or
  - (h) any other place prescribed by the regulations.
- (2) Accordingly, the other provisions of Division 4 of Part 3 of the [Occupational Health and Safety Act 1983](#) also apply in relation to any such place.

### **13A (Repealed)**

### **14 Inspector may suspend incompetent attendant**

- (1) Where it appears to an inspector that any person working a conveyor, escalator, moving walk or lift is careless, incompetent, or untrustworthy, the inspector may direct such person to, and the person so directed shall thereupon, cease to work, operate, or be in charge of such conveyor, escalator, moving walk or lift; and if any owner, lessee, or manager of any premises employs such person in connection with a conveyor, escalator, moving walk or lift without the authority in writing of an inspector, the owner, lessee or manager shall be guilty of an offence against this Act.
- (2) Where it appears to an inspector that any person operating an amusement device is careless, incompetent, or untrustworthy, the inspector may direct such person to, and

the person so directed shall thereupon, cease to operate such device; and if the owner, or person in charge, of any amusement device who has notice of such direction employs, instructs or allows such person to operate any amusement device without the authority in writing of an inspector, the owner or person in charge shall be guilty of an offence against this Act.

### **15 Inspector may give directions as to scaffolding etc**

(1) Where it appears to an inspector:

- (a) that the use in or on any building, place or premises of any conveyor, escalator, moving walk or lift or any scaffolding or crane or hoist or amusement device or public stand or plant, or any gear used in connection therewith, or the manner of carrying out any construction work would be dangerous to human life or limb, or
- (b) that with regard to any conveyor, escalator, moving walk or lift or any scaffolding or crane or hoist or amusement device or public stand or plant, or gear used in connection therewith erected or used or in course of erection or any construction work, the regulations are not being complied with,

the inspector may give such directions in writing to the owner of or person using such conveyor, escalator, moving walk or lift or to the owner of or the person in charge or apparently in charge of such scaffolding, crane, hoist, amusement device, public stand, plant, or gear or to the owner, constructor or person in charge or apparently in charge of such construction work as the inspector thinks necessary in order to prevent accidents or to ensure a compliance with the regulations; and such person shall, unless notice of appeal is given as hereinafter provided, forthwith carry out such directions.

Where such directions are, or any order on appeal therefrom is, of a continuing nature such person shall continue at all future times to carry out or comply with such directions, as varied from time to time, or any such order until the same are or is revoked.

(2) Where an inspector gives any directions under subsection (1) for the reason set forth in paragraph (a) of that subsection the inspector may at the time of giving such directions or subsequently thereto order:

- (a) the owner of or any persons using the conveyor, escalator, moving walk or lift in respect of which such directions are given forthwith to cease using the conveyor, escalator, moving walk or lift, or
- (b) the owner of or any persons working or using or operating any scaffolding, crane, hoist, amusement device, plant or gear in respect of which such directions are given to cease working or using or operating such scaffolding, crane, hoist, amusement device, plant or gear, or

- (b1) the owner or person in charge or apparently in charge of any public stand in respect of which such directions are given to desist from using such public stand or to refrain from permitting persons to use such public stand, or
- (c) the constructor or person in charge or apparently in charge of any construction work in respect of which such directions are given, or any contractor carrying out the work or any part of the work, to discontinue such work.

Any order or variation thereof given under this subsection shall unless sooner revoked have effect until such directions have or any order on appeal therefrom has been complied with.

Any order given under this subsection may specify the measures to be taken by the person to whom it is given to implement such order.

- (3) Any directions given under subsection (1) or any order given under subsection (2) may be varied from time to time or revoked.
- (4) The person to whom any directions have been given under this section may within seven days, or, where any other time has been prescribed, within such prescribed time, after such directions have been given to the person appeal against such directions to the Minister.

Notice of such appeal shall be given to the inspector.

The Minister shall refer the appeal to such Board of Reference, constituted under section 5A, as the Minister considers appropriate to hear the appeal. Such Board of Reference shall hear the appeal with all reasonable despatch at such time and place as it causes to be notified to the appellant and the inspector. The Board of Reference shall report its findings to the Minister who may make such order as the Minister thinks fit.

Every such order of the Minister shall be final and conclusive.

The regulations may prescribe the manner in which an appeal under this subsection may be made.

- (5) Any person who fails to comply:
  - (a) with any direction or order given to the person by an inspector pursuant to this section, or
  - (b) with any order made by the Minister pursuant to this section,shall be guilty of an offence against this Act.

## **16 (Repealed)**

## **Part 4 Certificates of competency**

### **17 Power crane and power hoist drivers**

- (1) Any person who is not the holder of a certificate of competency as a power crane or power hoist driver and who drives:
  - (a) any power crane, or
  - (b) any power hoist used in building work or excavation work, or
  - (c) any power hoist used for raising or lowering persons,shall be guilty of an offence against this Act.
- (2) Any person who is the holder of a certificate of competency as a power crane or power hoist driver and who drives any power crane or power hoist of a type, motive power or for purposes other than those specified in the certificate of competency issued to the person under this section, shall be guilty of an offence against this Act.
- (3) Any person who employs, instructs or allows:
  - (a) any person who is not the holder of a certificate of competency as a power crane or power hoist driver to drive any power crane or power hoist referred to in subsection (1), or
  - (b) any person who is the holder of a certificate of competency as a power crane or power hoist driver to drive any power crane or power hoist of a type, motive power or for purposes other than those specified in the certificate of competency issued to such person,shall be guilty of an offence against this Act.
- (4)
  - (a) Any person who possesses the prescribed qualifications and who satisfies the Authority that the person is trustworthy and competent to act as the driver of a power crane or power hoist shall be entitled to a certificate of competency as a power crane or power hoist driver, as the case may be.
  - (b) A certificate of competency under this section may specify the type and motive power of the power crane or power hoist in respect of which the holder may act as driver and the purposes for which the power crane or power hoist to which such certificate relates may be used.
- (5) Applications for a certificate of competency under this section shall be made to the Authority in the manner and form prescribed.
- (6) Any person who is dissatisfied with:

- (a) a decision of the Authority in respect of:
  - (i) the issue to the person of, or
  - (ii) the refusal to issue to the person,a certificate of competency under this section, or
- (b) an order made in respect of the person's certificate of competency by the Authority under subsection (7A),

may appeal to the Minister. The Minister shall refer the appeal to such Board of Reference, constituted under section 5A, as the Minister considers appropriate to hear the appeal. Such Board of Reference shall hear the appeal with all reasonable despatch at such time and place as it causes to be notified to the appellant. The Board of Reference shall report its findings to the Minister who may affirm, rescind or vary the decision of the Authority.

The decision of the Minister shall be final and conclusive and shall be carried into effect by the Authority.

The regulations may prescribe the manner in which an appeal under this subsection may be made.

- (7) Where, upon report by an inspector or otherwise, it appears to the Authority that the holder of a certificate of competency issued under this section has ceased to be sufficiently trustworthy or competent to hold his or her certificate of competency, the Authority may, by notice in writing served on the holder, require the holder to appear before the Authority at a time and place specified in the notice to show cause why:
  - (a) the certificate of competency issued to the holder should not be suspended or cancelled, or
  - (b) the type or motive power of the power cranes or power hoists to which the holder's certificate of competency relates or the purposes for which the power cranes or power hoists may be used should not be varied.
- (7A) If the Authority is not satisfied with the matters, if any, put to the Authority by the holder of a certificate of competency who has been served with a notice under subsection (7), the Authority may, by order in writing served on the holder:
  - (a) suspend the certificate of competency for such period not exceeding 12 months as the Authority may determine,
  - (b) cancel the certificate of competency, or
  - (c) vary the type or motive power of the power cranes or power hoists to which the certificate of competency relates or the purposes for which those power cranes or

power hoists may be used.

- (7B) A person whose certificate of competency has been suspended under subsection (7A) shall be deemed not to be the holder of the certificate of competency during the period of its suspension.
- (8) The Authority may:
- (a) by order published in the Gazette exempt the driver of any type of power crane or power hoist specified in such order from the operation of the provisions of subsections (1) and (2) and other persons from the operation of the provisions of subsection (3) in respect of any power crane or power hoist so specified, and
  - (b) by order in writing to the owner of any particular power crane or power hoist exempt the driver of such power crane or power hoist from the operation of the provisions of subsections (1) and (2) and other persons from the operation of the provisions of subsection (3) in respect of that particular power crane or power hoist.

Any exemption under this subsection may be granted subject to such conditions as the Authority may impose.

Any person who fails to comply with any such conditions shall be guilty of an offence against this Act.

- (8A) Any person who is dissatisfied with:
- (a) an order made by the Authority under subsection (8) or with any condition of any such order, or
  - (b) the refusal of the Authority to make an order under subsection (8),
- may appeal to the Minister in accordance with the regulations.
- (8B) After hearing an appeal under subsection (8A), the Minister may direct the Authority to revoke, alter or vary an order made under subsection (8) or to make such an order, as the case may require, and any such direction shall be carried into effect by the Authority.
- (8C) The Minister may, in a direction given under subsection (8B), require the Authority to:
- (a) insert conditions specified in the direction in an order made under subsection (8) when altering or varying the order, or
  - (b) make an order under subsection (8) that is specified in the direction.
- (9) Any driver's certificate granted by the Minister under the section which this section replaces and in force at the commencement of the *Scaffolding and Lifts (Amendment)*



*Act 1948* shall be deemed to be a certificate of competency issued under this section.

- (10) The Authority may issue in writing to any person a learner's permit authorising such person to act, in accordance with any conditions endorsed thereon or prescribed in relation thereto, as a power crane or power hoist driver. A learner's permit shall remain in force for such period endorsed thereon as the Authority may determine or as may in relation to such permits be prescribed.

Nothing in subsection (1) or (3) shall apply to or in respect of the driving of a power crane or a power hoist, as the case may be, by the holder of such a permit, in accordance with any conditions endorsed thereon or prescribed in relation thereto and for the bona fide purposes of such holder learning to be a power crane or power hoist driver, as the case may be.

The Authority may cancel or suspend a learner's permit issued pursuant to this subsection and a person whose learner's permit has been cancelled or is for the time being suspended shall not be deemed to be the holder of such a permit.

#### **17A Riggers, divers, powdermen and certain other tradespersons**

- (1) Any person who acts as a rigger, dogman, scaffolder, crane chaser, diver, powderman or explosive-powered tool operator unless the person is the holder of a certificate of competency as a rigger, dogman, scaffolder, crane chaser, diver, powderman or explosive-powered tool operator, as the case may be, shall be guilty of an offence against this Act.

(1A) Any person who is the holder of a certificate of competency:

- (a) as a rigger and who acts as a rigger in relation to any type of building, structure, crane or hoist,
- (b) as a scaffolder and who acts as a scaffolder in relation to any type of scaffolding,
- (c) as a dogman or crane chaser and who acts as a dogman or crane chaser, as the case may be, in relation to any type of crane,
- (d) as a diver or powderman and who acts as a diver or powderman, as the case may be, in relation to any type of construction work, or
- (e) as an explosive-powered tool operator and who acts as an explosive-powered tool operator in relation to any type of explosive-powered tool,

other than those specified in the certificate of competency as a rigger, scaffolder, dogman, crane chaser, diver, powderman or explosive-powered tool operator, as the case may be, issued to the person under this section shall be guilty of an offence against this Act.

(1B) Any person who employs, instructs or allows:

- (a) any person who is not the holder of the appropriate certificate of competency to act as a rigger, dogman, scaffolder, crane chaser, diver, powderman or explosive-powered tool operator, or
- (b) any person who is the holder of a certificate of competency:
  - (i) as a rigger, to act as a rigger in relation to any type of building, structure, crane or hoist,
  - (ii) as a scaffolder, to act as a scaffolder in relation to any type of scaffolding,
  - (iii) as a dogman or crane chaser, to act as a dogman or crane chaser, as the case may be, in relation to any type of crane,
  - (iv) as a diver or powderman, to act as a diver or powderman, as the case may be, in relation to any type of construction work, or
  - (v) as an explosive-powered tool operator, to act as an explosive-powered tool operator in relation to any type of explosive-powered tool,other than those specified in the certificate of competency as a rigger, scaffolder, dogman, crane chaser, diver, powderman or explosive-powered tool operator, as the case may be, issued to the person under this section,

shall be guilty of an offence against this Act.

(2)

- (a) Any person who possesses the prescribed qualifications and who satisfies the Authority that the person is trustworthy and competent to act as a rigger, dogman, scaffolder, crane chaser, diver, powderman or explosive-powered tool operator shall be entitled to a certificate of competency as a rigger, dogman, scaffolder, crane chaser, diver, powderman or explosive-powered tool operator, as the case may be.
- (b) A certificate of competency under this section:
  - (i) as a rigger, may specify the type of building, structure, crane or hoist,
  - (ii) as a scaffolder, may specify the type of scaffolding,
  - (iii) as a dogman or crane chaser, may specify the type of crane,
  - (iv) as a diver or powderman, may specify the type of construction work, or
  - (v) as an explosive-powered tool operator, may specify the type of explosive-powered tool,in relation to which the holder of such certificate may act as a rigger, scaffolder,

dogman, crane chaser, diver, powderman or explosive-powered tool operator, as the case may be.

(c) Despite paragraph (a), the Authority may refuse to issue a certificate of competency as a powderman to a person against whom an apprehended violence order (whether or not the order is an interim order) is in force under Part 15A of the *Crimes Act 1900*.

(d) Despite paragraph (a), the Authority may refuse to issue a certificate of competency as a powderman to a person if the Authority is satisfied that the person has a history of violence or threats of violence (whether or not the person has been convicted of any offence involving violence). In this paragraph, **violence** includes behaviour referred to in section 562AB (Stalking, intimidation with intent to cause fear for personal safety) of the *Crimes Act 1900*.

(3) Application for a certificate of competency under this section shall be made to the Authority in the manner and form prescribed.

(4) Any person who is dissatisfied with:

(a) a decision of the Authority in respect of:

(i) the issue to the person of, or

(ii) the refusal to issue to the person,

a certificate of competency under this section, or

(b) an order made in respect of the person's certificate of competency by the Authority under subsection (5AA),

may appeal to the Minister. The Minister shall refer the appeal to such Board of Reference, constituted under section 5A, as the Minister considers appropriate to hear the appeal. Such Board of Reference shall hear the appeal with all reasonable despatch at such time and place as it causes to be notified to the appellant. The Board of Reference shall report its findings to the Minister who may affirm, rescind or vary the decision of the Authority.

The decision of the Minister shall be final and conclusive and shall be carried into effect by the Authority.

The regulations under this Act may prescribe the manner in which an appeal under this subsection may be made.

(5) Where, upon report of an inspector or otherwise, it appears to the Authority that the holder of a certificate of competency issued under this section has ceased to be sufficiently trustworthy or competent to hold the certificate of competency, the Authority may, by notice in writing served on the holder, require the holder to appear

before the Authority at a time and place specified in the notice to show cause why:

- (a) the certificate of competency issued to the holder should not be suspended or cancelled, or
- (b) the type of building, structure, crane or hoist, the type of scaffolding, the type of crane, the type of construction work or the type of explosive-powered tool to which the certificate of competency relates should not be varied.

(5AA) If the Authority is not satisfied with the matters, if any, put to the Authority by the holder of a certificate of competency who has been served with a notice under subsection (5), the Authority may, by order in writing served on the holder:

- (a) suspend the certificate of competency for such period not exceeding 12 months as the Authority may determine,
- (b) cancel the certificate of competency, or
- (c) vary the type of building, structure, crane or hoist, the type of scaffolding, the type of crane, the type of construction work or the type of explosive-powered tool to which the certificate of competency relates.

If the Authority is satisfied that an apprehended violence order is in force under Part 15A of the [Crimes Act 1900](#) against the holder of a powderman's certificate of competency (whether or not the person has been served with a notice under subsection (5)) the Authority may, at any time, suspend the certificate of competency for any period determined by the Authority, being a period that ends on or before the end of the period during which the apprehended violence order remains in force.

If the Authority is satisfied that the holder of a powderman's certificate of competency who has been served with a notice under subsection (5) has a history of violence or threats of violence (whether or not the person has been convicted of any offence involving violence) the Authority may, at any time, suspend the certificate of competency pending the determination of the matter by the Authority under this subsection.

In this subsection, **violence** includes behaviour referred to in section 562AB (Stalking, intimidation with intent to cause fear for personal safety) of the [Crimes Act 1900](#).

(5AB) A person whose certificate of competency has been suspended under subsection (5AA) shall be deemed not to be the holder of the certificate of competency during the period of its suspension.

(5A)

- (a) The Authority may by order published in the Gazette exempt:
  - (i) persons acting as riggers in relation to any type of building, structure, crane or

hoist specified in such order from the operation of the provisions of subsections (1) and (1A) whilst they are so acting, and persons who employ, instruct or allow persons to act as aforesaid from the operation of the provisions of subsection (1B) in respect of persons acting as riggers in relation to the type of building, structure, crane or hoist so specified,

- (ii) persons acting as scaffolders in relation to any type of scaffolding specified in such order from the operation of the provisions of subsections (1) and (1A) whilst they are so acting, and persons who employ, instruct, or allow persons to act as aforesaid from the operation of the provisions of subsection (1B) in respect of persons acting as scaffolders in relation to the type of scaffolding so specified,
- (iii) persons acting as dogmen or crane chasers in relation to any type of crane specified in such order, to all cranes used in connection with any industry so specified, to any type of crane so specified while it is used in connection with any industry so specified, to all cranes used in any building, place or premises so specified, or to any type of crane so specified while it is used in any building, place or premises so specified, from the operation of the provisions of subsections (1) and (1A) whilst they are so acting, and persons who employ, instruct or allow persons to act as aforesaid from the operation of the provisions of subsection (1B) in respect of persons acting as dogmen or crane chasers, as the case may be, in relation to the type of crane so specified,
- (iv) persons acting as divers or powdermen in relation to any type of construction work specified in the order, from the operation of the provisions of subsections (1) and (1A) whilst they are so acting, and persons who employ, instruct or allow persons to act as aforesaid from the operation of the provisions of subsection (1B) in respect of persons acting as divers or powdermen, as the case may be, in relation to the type of construction work so specified, or
- (v) persons acting as explosive-powered tool operators in relation to any type of explosive-powered tool specified in the order, from the operation of the provisions of subsections (1) and (1A) whilst they are so acting, and persons who employ, instruct or allow persons to act as aforesaid from the operation of the provisions of subsection (1B) in respect of persons acting as explosive-powered tool operators, in relation to the type of explosive-powered tool so specified.

(b) The Authority may by order in writing:

- (i) to the owner or any person erecting or proposing to erect any particular building or structure or to the owner of or any person setting up or proposing to set up any particular crane or hoist exempt persons acting as riggers in relation to such building, structure, crane or hoist from the operation of the

provisions of subsections (1) and (1A) whilst they are so acting, and persons who employ, instruct or allow persons to act as aforesaid from the operation of the provisions of subsection (1B) in respect of persons acting as riggers in relation to that particular building, structure, crane or hoist,

- (ii) to the owner of or any person erecting, altering or demolishing or proposing to erect, alter or demolish any particular scaffolding exempt persons acting as scaffolders in relation to such scaffolding from the operation of the provisions of subsections (1) and (1A) whilst they are so acting, and persons who employ, instruct or allow persons to act as aforesaid from the operation of the provisions of subsection (1B) in respect of persons acting as scaffolders in relation to that particular scaffolding,
  - (iii) to the owner of any particular crane exempt persons acting as dogmen or crane chasers in relation to such crane from the operation of the provisions of subsections (1) and (1A) whilst they are so acting, and persons who employ, instruct or allow persons to act as aforesaid from the operation of the provisions of subsection (1B) in respect of persons acting as dogmen or crane chasers, as the case may be, in relation to that particular crane,
  - (iv) to the person carrying out or proposing to carry out any particular construction work exempt persons acting as divers, powdermen or explosive-powered tool operators in relation to the construction work from the operation of the provisions of subsections (1) and (1A) whilst they are so acting, and persons who employ, instruct or allow persons to act as aforesaid from the operation of the provisions of subsection (1B) in respect of persons acting as divers, powdermen or explosive-powered tool operators, as the case may be, in relation to that particular construction work, or
  - (v) to the owner of any particular explosive-powered tool exempt persons acting as explosive-powered tool operators in relation to the tool from the operation of the provisions of subsections (1) and (1A) whilst they are so acting, and persons who employ, instruct or allow persons to act as aforesaid from the operation of the provisions of subsection (1B) in respect of persons acting as explosive-powered tool operators in relation to that particular explosive-powered tool.
- (c) Any exemption under this subsection may be granted subject to such conditions as the Authority may impose.

Any person who fails to comply with such conditions shall be guilty of an offence against this Act.

(5BA) Any person who is dissatisfied with:

- (a) an order made by the Authority under subsection (5A) or with any condition of any

such order, or

(b) the refusal of the Authority to make an order under subsection (5A),

may appeal to the Minister in accordance with the regulations.

(5BB) After hearing an appeal under subsection (5BA), the Minister may direct the Authority to revoke, alter or vary an order made under subsection (5A) or to make such an order, as the case may require, and any such direction shall be carried into effect by the Authority.

(5BC) The Minister may, in a direction given under subsection (5BB), require the Authority to:

(a) insert conditions specified in the direction in an order made under subsection (5A) when altering or varying the order, or

(b) make an order under subsection (5A) that is specified in the direction.

(5B) The Authority may issue in writing to any person a learner's permit authorising such person to act, in accordance with any conditions endorsed thereon or prescribed in relation thereto, as a rigger, dogman, scaffolder, crane chaser, diver or powderman. A learner's permit shall remain in force for such period endorsed thereon as the Authority may determine or as may in relation to such permits be prescribed.

Nothing in subsection (1) or (1B) shall apply to or in respect of any work done by the holder of such a permit, in accordance with any conditions endorsed thereon or prescribed in relation thereto and for the bona fide purpose of such holder learning to be a rigger, dogman, scaffolder, crane chaser, diver or powderman, as the case may be.

The Authority may cancel or suspend a learner's permit issued pursuant to this subsection and a person whose learner's permit has been cancelled or is for the time being suspended shall not be deemed to be the holder of such a permit.

(5C) Nothing in subsection (1) or (1B) shall apply to or in respect of any work done by a person using an explosive-powered tool in prescribed circumstances.

(6) In this section:

**Crane chaser** means a person slinging and directing the movement of loads handled by a crane where such loads are usually in full view of the crane driver.

**Diver** means a diver carrying out diving work.

**Dogman** means a person slinging and directing the movement of loads handled by a crane where such loads are usually not in full view of the crane driver.

**Hoist** includes any personnel and materials hoist.

**Powderman** means a person engaged in the preparation or firing of charges of explosives in the course of construction work.

**Rigger** means a person directly responsible for the placing in position of the members of a building or structure, other than scaffolding, in the course of erection and for the manner of ensuring the stability of those members, for dismantling or demolishing buildings or structures, other than scaffolding, or for setting up or dismantling cranes or hoists.

**Scaffolder** means a person engaged in the work of erecting, altering or demolishing scaffolding which is so placed that a person or object falling therefrom could fall a distance of 3 metres or more.

### **17B Endorsement of certificates**

- (1) Where the Authority makes an order under section 17 (7A) or 17A (5AA), the Authority may, in the order, require the person to whom the certificate of competency to which the order relates was issued to deliver the certificate of competency to the Authority within a time specified in the order for the purpose of the certificate of competency being endorsed or cancelled.
- (2) A person who, without reasonable excuse, fails to comply with a requirement made under subsection (1) shall be guilty of an offence against this Act and liable to a penalty not exceeding 50 penalty units.

## **Part 5 Miscellaneous**

### **18 Notice of accidents**

- (1) Where an accident occurs in connection with any conveyor, escalator, moving walk, crane, hoist, amusement device, public stand, lift, plant, scaffolding, gear or construction work, and the accident:
  - (a) causes loss of life or serious personal injury, or
  - (b) is an accident involving any breakage, distortion, or damage to any load-bearing member or part of a conveyor, escalator, moving walk, crane, hoist, amusement device, public stand, lift, plant, scaffolding, gear or supporting structure, or
  - (c) so disables any person working on or about such conveyor, escalator, moving walk, crane, hoist, amusement device, public stand, lift, plant, scaffolding, gear or construction work as to prevent the person from returning to the person's work within forty-eight hours after the accident, or
  - (d) consists in any person receiving an electric shock, or
  - (e) is an accident involving the failure of any brake, steering or limiting device or other control device of a conveyor, escalator, moving walk, crane, hoist,



amusement device, lift, plant, scaffolding or gear, or

- (f) consists in the failure of any stud, pin, dowel, screw, rivet, spike or other object expelled from an explosive-powered tool to lodge in the substance on which the tool is being used,

written notice of the accident in the prescribed form and accompanied by the prescribed particulars shall forthwith be given to the Authority by the owner or person in charge of such conveyor, escalator, moving walk, crane, hoist, amusement device, public stand, lift, plant, scaffolding or gear or by the person in charge of or constructor for the construction work.

- (2) No person shall move or in any manner interfere with any conveyor, escalator, moving walk, crane, hoist, amusement device, public stand, lift, plant, scaffolding, gear, or supporting structure, or part thereof involved in any accident referred to in subsection (1) or any object, article, or thing whatsoever affected or damaged as a result of such accident, unless and until the person has obtained the permission of the Authority or an inspector so to do.

This subsection shall not apply where any such movement or interference is necessary to aid or relieve any person involved in any such accident or to prevent further injury to person or property.

This subsection does not apply to anything on premises that are a place of work within the meaning of the *Occupational Health and Safety Act 1983* (as to which see section 21B of that Act).

- (3) Every person who commits a breach of the provisions of this section shall be guilty of an offence against this Act.
- (4) (Repealed)

### **18A Exemptions**

Where the regulations so provide, a specified person or a specified class of persons is, subject to such conditions as are prescribed, exempt from the operation of section 17 or 17A.

### **19 Act not to affect rights of person to recover damages**

Nothing in this Act or the regulations contained shall operate to prejudice or affect any right which, if this Act had not been enacted, a person would have had to recover damages, take any suit or proceeding, or receive any payment or compensation in respect of any injury sustained by the person whilst:

- (a) driving any power crane or power hoist to which section 17 applies, or
- (b) acting as a crane chaser, diver, dogman, explosive-powered tool operator,

powderman, rigger or scaffolder (in each case, within the meaning of section 17A), or

- (c) engaged in any construction work or in work in connection with any conveyor, escalator, moving walk, crane, gear, hoist, amusement device, public stand, lift, plant, scaffolding or supporting structure to which any of the provisions of this Act or the regulations apply.

## **20 Service of notices etc**

Any direction, order, or notice to be served or given under this Act or the regulations may be served upon or given to any person:

- (a) by delivering the same to such person, or
- (b) by leaving the same at the person's usual or last known place of residence or business, or
- (c) by forwarding the same by post in a prepaid letter addressed to such person at the person's usual or last known place of residence or business; and such service shall be deemed to have been effected at the time at which the letter would be delivered in the ordinary course of post.

## **21 Penalties and proceedings for offences**

- (1) The penalty for any offence against this Act for which no penalty is otherwise expressly provided shall be a penalty not exceeding 500 penalty units in the case of a corporation or 250 penalty units in any other case.

(1AA) 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.

(1A) Proceedings for the recovery of any penalty imposed by or under this Act may be instituted only by an inspector or a person authorised by the Minister for the purposes of this section.

(1B) 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 apply to proceedings before a Local Court for offences against this Act or the regulations.

(2) In any proceedings for the recovery of a penalty or fee imposed by or under this Act a statement purporting to be signed on behalf of the Authority:

- (a) that a certificate or permit of the description specified in the statement has or has not been issued pursuant to this Act to any person so specified and, where a

certificate or permit has been so issued, as to the date of issue of and particulars contained in such certificate or permit, or

- (b) that at any date or during any period specified in the statement a person specified in the statement was or was not the holder of a certificate or permit, of the description specified in such statement, issued pursuant to this Act, or
- (c) that at any date specified in the statement a notice as to any matter so specified, being a matter of which notice is required by or under this Act to be given to or served on the Authority, had or had not been given to or served on the Authority by any person so specified and, where a notice has been so given or served, as to the date when it was so given or served and as to the particulars contained in such notice,

shall be prima facie evidence of the matters contained in the statement without proof of the signature or of the official character of the person by whom the statement appears to have been signed.

- (3) The maximum penalty that may be imposed in proceedings for an offence against this Act or the regulations by a Local Court is 500 penalty units or the maximum penalty provided in respect of the offence, whichever is less.
- (3A) The maximum penalty that may be imposed in any such proceedings by the Industrial Relations Commission in Court Session is the maximum penalty provided in respect of the offence.
- (4) Notwithstanding anything in any other Act, proceedings for an offence against this Act or the regulations may be instituted within the period of 2 years after the act or omission alleged to constitute the offence.

#### **21A Proof of standards**

In proceedings for an offence against this Act or the regulations a printed document that is or purports to be a standard rule, code or specification of a body or authority referred to in section 22 (3) and that has been or purports to have been published or issued by or on behalf of that body or authority is admissible as evidence in those proceedings and, in the absence of evidence to the contrary, is proof of that standard rule, code or specification.

#### **21B Forgery of certificates or permits etc**

- (1) A person who:
  - (a) forges or counterfeits any instruments that purports to have been issued, made or granted under this Act or the regulations,
  - (b) knowingly utters or makes use of any instruments so forged or counterfeited,
  - (c) personates any person named in an instrument that has in fact been so issued,

made or granted, or

(d) falsely pretends to be an inspector,

shall be guilty of an offence against this Act and be liable to imprisonment for a term not exceeding 12 months.

(2) A person who:

(a) wilfully makes a false entry in any book, register, notice, certificate, list, record or document required by this Act or the regulations to be kept or served,

(b) wilfully makes or signs a false return under this Act or the regulations,

(c) wilfully makes or signs any false statement:

(i) in any application, or

(ii) in any notice required to be given by the person,

under this Act or the regulations, or

(d) knowingly makes use of any false entry, return or statement referred to in paragraph (a), (b) or (c),

shall be guilty of an offence against this Act and be liable to a penalty not exceeding 5 penalty units for each offence, or to be imprisoned for a term not exceeding 3 months.

## 22 Regulations

(1) The Governor may make regulations not inconsistent with this Act prescribing all matters which are required or authorised to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting the generality of the powers conferred by subsection (1) the Governor may make regulations:

(a) (Repealed)

(b) prohibiting the erection or alteration of any conveyer, escalator, moving walk, lift, amusement device, public stand, crane, or hoist without the permission of the Authority, and prescribing all matters necessary or convenient to be prescribed in connection with applications for such permission, and the plans and descriptions and other particulars to be lodged with such applications,

(b1) prohibiting the erection or setting up or the setting or placing in position or the operation or use or alteration of any amusement device or public stand:

(i) in all areas (within the meaning of the [Local Government Act 1993](#)) other than those specified in the regulations, or in those areas (or parts of areas) that are

specified in the regulations, without first obtaining the approval of the council of the area,

- (ii) in such place, town, district or locality as may be so specified, without the approval of such authority or person or of the holder for the time being of such office as may be so specified having first been obtained,

and prescribing all matters necessary or convenient to be prescribed in connection with any application for such approval, and the plans and descriptions and other particulars to be lodged with any such application,

- (c) (Repealed)
- (d) requiring that notice shall be given to the Authority in cases where the ownership or right of control of a conveyor, escalator, moving walk or lift has been changed by sale, transfer or otherwise,
- (e) requiring that conveyors, escalators, moving walks, cranes, hoists, amusement devices, and lifts shall be registered and prescribing all matters necessary or convenient to be prescribed in relation to such registration, including the particulars to be furnished, the forms of application for registration and renewal of registration and the form of the register, and the fees to be paid upon application for registration and renewal of registration and for inspection of the register,
- (f) prescribing or providing for the determination of the fees to be paid in respect of all or any of the following matters:
  - (i) applications for permits to erect or alter conveyors, escalators, moving walks or lifts,
  - (ia) applications for approvals to erect, set up or set or place in position or operate or use amusement devices or public stands, or to alter amusement devices or public stands,
  - (ii) reviewing the designs and descriptions of conveyors, escalators, moving walks, cranes, hoists, amusement devices, public stands, lifts, plant, scaffolding and gear and the inspection and testing of conveyors, escalators, moving walks, cranes, hoists, amusement devices, public stands, lifts, plant, scaffolding and gear,
  - (iii) applications for the issue and renewal of certificates of competency as power crane or power hoist drivers,
  - (iv) applications for the issue and renewal of certificates of competency as riggers, dogmen, scaffolders, crane chasers, divers, powdermen and explosive-powered tool operators,

- (v) (Repealed)
- (vi) the issue of learners' permits to persons authorising them to act, in accordance with any conditions endorsed thereon or prescribed in relation thereto, as power crane or power hoist drivers, or as riggers, dogmen, scaffolders, crane chasers, divers or powdermen,
- (vii) (Repealed)
- (g) relating to:
  - (i) the proper design, construction, erection, use and maintenance of conveyors, escalators, moving walks, cranes, hoists, amusement devices, public stands, lifts, plant, scaffolding and gear,
  - (ii) the certification, qualifications and duties of persons in charge of conveyors, escalators, moving walks or lifts, drivers of power cranes and power hoists and of riggers, dogmen, scaffolders, crane chasers, divers, powdermen and explosive-powered tool operators,
  - (iii) the qualifications and duties of persons in charge of or engaged in the erection, use, maintenance, or dismantling of conveyors, escalators, moving walks, cranes, hoists, amusement devices, public stands, lifts, plant or scaffolding,
  - (iv) the manner of carrying out construction work,
  - (v) safeguards and measures to be taken for securing the safety and health of persons engaged in construction work, or at or in connection with conveyors, escalators, moving walks, cranes, hoists, amusement devices, public stands, lifts, plant, scaffolding or gear,
  - (vi) (Repealed)
- (g1) prohibiting any person not the holder of the appropriate certificate of competency or learner's permit from being employed as or acting as a diver's attendant, and in relation thereto:
  - (i) providing for the examination and certification of divers' attendants, or of any class of such persons, and for the granting, issue and renewal of certificates of competency and learners' permits,
  - (ii) prescribing the fees to be paid in respect of examinations for certificates of competency and the issue and renewal of such certificates and of learners' permits,
  - (iii) authorising the Authority by certificate in writing to exempt, absolutely or subject to conditions, any person or class of persons from all or any of the

provisions of the regulations made pursuant to this paragraph where the Authority is satisfied that by reason of the nature of the work to be carried out by such person or class of persons the application of such provisions would be impracticable or inappropriate,

(g2) prescribing the terms for which certificates of competency issued under section 17 or 17A or any renewals thereof shall be in force and providing for renewal of any such certificate of competency,

(h) prescribing the precautions and measures to be taken for securing the safety of persons where the roof of any building or structure, whether constructed or in course of construction, is, or is intended to be, sheathed with asbestos cement or other brittle material.

(3)-(3B) (Repealed)

(3C) Regulations made pursuant to paragraph (b1) of subsection (2) may:

(a) require or permit a council, authority or person before granting any approval referred to in that paragraph to satisfy itself or himself or herself by such means as may be prescribed or where no means are prescribed by such means as the council, authority or person concerned thinks fit:

(i) as to the safety of the manner of construction, erection or setting up or the setting or placing in position or the operation or use or alteration of the amusement device or public stand in respect of which the approval is sought or of such amusement device or public stand as altered,

(ii) that in relation to such amusement device or public stand there has been obtained from an insurer carrying on in New South Wales the business of accident insurance a contract of insurance or indemnity in respect of death or personal injury resulting from the erection, setting up, setting or placing in position, operation, use or alteration or total or partial failure or collapse of the device or stand, or of the device or stand as altered, and that such contract is expressed to be and to continue in force for the period in respect of which the approval is sought and makes such provision as may be prescribed or where no such provision is prescribed as the council, authority or person considers satisfactory for the settlement of any claim in respect of any such death or personal injury,

(iii) as to such matters in relation to any matter or matters referred to in subparagraph (i) or (ii) as may be prescribed,

(iv) as to other prescribed matters, and

(b) empower the council, authority or person to grant such approval either absolutely or subject to prescribed or other conditions, and

(c) provide for the revocation or suspension of such approval.

In this subsection **personal injury** does not include any injury as defined in the [Workers' Compensation Act 1926](#), as amended by subsequent Acts, to a worker as defined in that Act, as so amended, and **death** does not include death resulting from such an injury.

(3D) A regulation may:

- (a) apply differently according to such factors as may be specified in the regulation, and
- (b) impose duties upon constructors, contractors, principal contractors, sub-contractors or other persons.

(4) A regulation may impose a penalty not exceeding 250 penalty units for any breach thereof.

(5) (Repealed)

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

The Second Schedule has effect.

### **First Schedule Repeal of Acts**

<b>Reference to Act</b>	<b>Subject or short title</b>
No 91, 1902	<a href="#">Scaffolding and Lifts Act 1902</a>
No 8, 1908	<a href="#">Scaffolding and Lifts (Amending) Act 1908</a>

### **Second Schedule Savings, transitional and other provisions**

(Section 23)

### **Part 1 Savings and transitional provisions consequent on enactment of certain Acts**

#### **1 Regulations**

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

this Act

[Occupational Health and Safety Legislation \(Amendment\) Act 1994](#)

[WorkCover Legislation Amendment Act 1995](#)



- (2) Any such provision may, if the regulations so provide, take effect as 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 [Occupational Health and Safety Legislation \(Amendment\) Act 1994](#)**

### **2 Definitions**

In this Part:

**amending Act** means the [Occupational Health and Safety Legislation \(Amendment\) Act 1994](#).

**Chief Inspector** means the person who held office as Chief Inspector of Construction Safety immediately before the repeal of section 5 by Schedule 2 (2) to the amending Act.

**Deputy Chief Inspector** means the person who held office as Deputy Chief Inspector of Construction Safety immediately before the repeal of section 5 by Schedule 2 (2) to the amending Act.

### **3 Chief Inspector and Deputy Chief Inspector**

- (1) The Chief Inspector and Deputy Chief Inspector are taken to hold office as inspectors under the [Occupational Health and Safety Act 1983](#) (as amended by Schedule 1 (4) to the amending Act).
- (2) Nothing in the amending Act or this clause is taken to affect the terms and conditions of employment of the Chief Inspector and Deputy Chief Inspector under the [Public Sector Management Act 1988](#).
- (3) The Authority may, under the [WorkCover Administration Act 1989](#), delegate to the Chief Inspector or Deputy Chief Inspector the exercise on its behalf of such of its functions under this Act as it thinks fit.

### **4 Transfer of functions to Authority**

- (1) Anything done by or in relation to the Chief Inspector or Deputy Chief Inspector in the

exercise of a function conferred or imposed on that person under this Act is taken, after the commencement of Schedule 2 (2) to the amending Act, to have been done by or in relation to the Authority and the functions under this Act are to be exercised by the Authority.

- (2) Any proceedings to which the Chief Inspector or Deputy Chief Inspector is a party immediately before the commencement of the amendment to this Act made by Schedule 2 (2) to the amending Act are not affected by that amendment.
- (3) However, on the commencement of that amendment, the Authority is taken to be a party to those proceedings instead of the Chief Inspector or Deputy Chief Inspector, as the case may be.

#### **5 References to Chief Inspector and Deputy Chief Inspector**

A reference in any other Act, in an instrument made under any Act or in any document of any kind to the Chief Inspector or Deputy Chief Inspector is to be read as a reference to the Authority.

#### **6 Proceedings for penalties**

Section 21, as in force immediately before the commencement of Schedule 2 (11) to the amending Act, continues to apply in relation to proceedings pending immediately before that commencement.

### **Part 3 Provisions consequent on enactment of the [WorkCover Legislation Amendment Act 1995](#)**

#### **7 Increase in penalty that may be imposed by Local Court**

- (1) The amendment made to section 21 (3) of this Act by the [WorkCover Legislation Amendment Act 1995](#) does not apply in respect of proceedings for an offence against this Act or the regulations that were commenced in a Local Court before the commencement of that amendment.
- (2) In respect of proceedings commenced on or after the commencement of that amendment, the amendment applies whether the offence was committed before or after that commencement.