



Occupational Health and Safety Act 1991

Act No. 30 of 1991 as amended

This compilation was prepared on 18 April 2007
taking into account amendments up to Act No. 54 of 2007

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be
affected by application provisions that are set out in the Notes section

Prepared by the Office of Legislative Drafting and Publishing,
Attorney-General's Department, Canberra

Contents

Part 1—Preliminary	1
1 Short title [see Note 1].....	1
2 Commencement [see Note 1].....	1
3 Objects.....	1
4 Act excludes some State and Territory laws.....	2
5 Interpretation.....	3
6 Act not to prejudice national security.....	11
7 Act not to prejudice Australia’s defence.....	12
8 Act not to prejudice certain police operations.....	13
9 Meaning of <i>employee</i> etc.....	13
9A Meaning of <i>contractor</i> etc.....	16
10 Commonwealth to act through employing authority.....	17
11 Extent to which Act binds the Crown.....	18
12 Functions conferred on Commission.....	19
12A Functions conferred on Comcare.....	20
13 Application of Act to external Territories etc.....	20
14 Application of Act to workplaces controlled by contractors.....	20
15 Application of Act to employees working in non-Commonwealth premises.....	21
15A Application of <i>Criminal Code</i>	21
Part 2—Occupational health and safety	22
Division 1—General duties relating to occupational health and safety	22
16 Duties of employers in relation to their employees etc.....	22
16A Development of health and safety management arrangements.....	24
16B Certificate evidencing employee representative’s entitlement to be involved in consultations.....	25
17 Duty of employers in relation to third parties.....	26
18 Duties of manufacturers in relation to plant and substances.....	26
19 Duties of suppliers in relation to plant and substances.....	28
20 Duties of person erecting or installing plant in a workplace.....	29
21 Duties of employees in relation to occupational health and safety.....	29
22 Reliance on information supplied or results of research.....	31
Division 2—Specific duties relating to occupational health and safety	33
23 Regulations relating to occupational health and safety.....	33
23A Unlicensed operation of major hazard facility.....	34

Part 3—Workplace arrangements	36
Division 1—Health and safety representatives	36
24 Designated work groups	36
24A Consultations on designated work groups are health and safety management arrangement consultations.....	38
24B List of designated work groups.....	38
25 Selection of health and safety representatives	38
25A Election of health and safety representatives.....	39
25B List of health and safety representatives	40
25C Employees must be notified of selection etc. of health and safety representative	40
26 Term of office.....	41
26A Casual vacancy	41
27 Training of health and safety representatives	41
28 Powers of health and safety representatives	42
29 Provisional improvement notices	44
30 Duties of employers in relation to health and safety representatives	47
31 Resignation etc. of health and safety representative	49
32 Disqualification of health and safety representatives.....	49
33 Deputy health and safety representatives.....	50
Division 2—Health and safety committees	52
34 Health and safety committees.....	52
35 Functions of health and safety committees.....	53
36 Duties of employers in relation to health and safety committees	54
Division 3—Emergency procedures	55
37 Action by health and safety representatives.....	55
38 Directions to perform other work	56
Part 4—Advice, investigations and inquiries	57
Division 1—Advice	57
38A Comcare may advise employers etc.....	57
39 Referral of persons seeking advice to experts.....	57
Division 2—Investigations	58
40 Appointment of investigators	58
41 Investigations.....	59
42 Power of entry	60
43 Power to require assistance and information	61
44 Power to take possession of plant, take samples of substances etc.	62
45 Power to direct in writing that workplace etc. not be disturbed.....	63

45A	Power to direct orally that workplace etc. not be disturbed	65
46	Power to issue prohibition notices	66
47	Power to issue improvement notices	69
48	Appeals.....	71
49	Liability of investigators.....	73
50	Notices not to be tampered with or removed.....	74
51	Arrangements with States for services of State officers	74
Division 3—Inquiries and reports		75
52	Application	75
53	Report of investigation	75
54	Power to obtain information and documents	76
55	Commission may conduct public inquiry	76
56	Power to summon witnesses.....	77
57	Failure of witness to attend.....	77
58	Power to administer oath or affirmation	78
59	Failure to be sworn or to answer questions.....	78
60	Protection of members and witnesses	78
61	Contempt of Commission.....	78
62	Powers of Commission in relation to documents produced.....	79
63	Allowances to witnesses.....	79
64	Witness not to be prejudiced in employment.....	79
65	Report to be given to Minister in certain circumstances.....	80
66	Report to be given to Minister of failures to comply with directions etc.....	80
67	Delegation by Commission	81
Part 4A—Recovery of cost of administering Act		82
Division 1—Charges for services		82
67A	Power of Commission to enter into arrangements	82
Division 2—Contributions		83
67B	Estimates of contributions	83
67C	Amount of contribution	83
67D	Information to be given to Commission	84
67E	Review by Commission.....	84
67F	Review by Minister	85
67G	Confirmation of estimates	85
67H	Payment of contribution	86
67J	Penalty for late payment.....	86
67K	Recovery of contribution and penalty.....	87
Part 5—Miscellaneous		88
68	Notification of accidents and dangerous occurrences.....	88
69	Records of accidents and dangerous occurrences to be kept.....	88

70	Codes of practice	89
71	Use of codes of practice in proceedings	90
72	Interference etc. with equipment etc.....	91
73	Employer not to levy employees etc.....	91
74	Certain matters to be included in annual reports.....	91
75	Annual report of Commission	93
75A	Annual report of Comcare	93
76	Employer not to dismiss etc. employees on certain grounds	93
77	Institution of proceedings	94
78	Conduct of directors, servants and agents.....	95
79	Act not to give rise to other liabilities etc.	96
80	Effect of breach of Act etc. on contracts of employment etc.	97
81	Circumstances preventing compliance with Act may be defence to prosecution.....	97
82	Regulations.....	98
Schedule 1—Government business enterprises		99
Schedule 2—Civil and criminal proceedings		100
Part 1—Civil proceedings		100
1	Courts that may exercise jurisdiction under this Part.....	100
2	Declarations of contravention.....	100
3	Declaration of contravention is conclusive evidence.....	101
4	Pecuniary penalty orders	101
5	Who may apply for a declaration or order?	103
6	Time limit for application for a declaration or order	104
7	Conduct constituting a breach of 2 or more provisions listed in subclause 2(1).....	104
8	Civil evidence and procedure rules for declarations of contravention etc.	104
9	Civil proceedings after criminal proceedings	104
10	Criminal proceedings during civil proceedings	104
11	Criminal proceedings after civil proceedings	105
12	Evidence given in proceedings for penalty not admissible in criminal proceedings	105
13	Relief from liability for contravention of subclause 2(1).....	105
14	Injunctions.....	106
15	Remedial orders.....	108
16	Undertakings	109
Part 2—Criminal prosecutions		111
17	Criminal jurisdiction not conferred on Federal Court.....	111
18	Offences resulting in death or serious bodily harm	111
19	Offences exposing employees to a substantial risk of death or serious bodily harm.....	112

20	Other offences	112
21	Maximum penalties	113
Notes		117

An Act to promote the occupational health and safety of persons employed by the Commonwealth, Commonwealth authorities and certain licensed corporations, and for related purposes

Part 1—Preliminary

1 Short title [see Note 1]

This Act may be cited as the *Occupational Health and Safety Act 1991*.

2 Commencement [see Note 1]

- (1) Sections 1 and 2 commence on the day on which this Act receives the Royal Assent.
- (2) Subject to subsection (3), the remaining provisions of this Act commence on a day or days to be fixed by Proclamation.
- (3) If a provision referred to in subsection (2) does not commence within the period of 6 months commencing on the day on which this Act receives the Royal Assent, that provision commences on the first day after the end of that period.

3 Objects

The objects of this Act are:

- (a) to secure the health, safety and welfare at work of employees of the Commonwealth, of Commonwealth authorities and of non-Commonwealth licensees; and
- (b) to protect persons at or near workplaces from risks to health and safety arising out of the activities of such employees at work; and
- (c) to ensure that expert advice is available on occupational health and safety matters affecting employers, employees and contractors; and

Section 4

- (d) to promote an occupational environment for such employees at work that is adapted to their needs relating to health and safety; and
- (e) to foster a co-operative consultative relationship between employers and employees on the health, safety and welfare of such employees at work; and
- (f) to encourage and assist employers, employees and other persons on whom obligations are imposed under the Act to observe those obligations; and
- (g) to provide for effective remedies if obligations are not met, through the use of civil remedies and, in serious cases, criminal sanctions.

4 Act excludes some State and Territory laws

Exclusion of State and Territory laws

- (1) Subject to subsection (2), this Act is intended to apply to the exclusion of any law of a State or Territory (other than a law prescribed under subsection (3)) to the extent that the law of the State or Territory relates to occupational health or safety and would otherwise apply in relation to employers, employees or the employment of employees.

Note: For the meaning of *employer* and *employee*, see section 5.

State or Territory laws not excluded from applying to situations not covered by this Act

- (2) If, because of section 14 or 15, provisions of this Act do not apply in relation to a particular situation, subsection (1) is not intended to affect the application of State or Territory laws to that situation.

Allowing certain State or Territory laws to apply

- (3) If a State or Territory law deals with a matter relating to occupational health or safety that is not dealt with by or under this Act, the regulations may prescribe the law as not being intended to be excluded by this Act.

Interpretation

- (4) In this section, a reference to laws of a State or Territory includes a reference to such laws as they have effect as applied provisions within the meaning of the *Commonwealth Places (Application of Laws) Act 1970*.
- (5) In this section:
- law** includes a provision of a law (including, for example, a formula or a component of a formula).

5 Interpretation

- (1) In this Act, unless the contrary intention appears:

annual report, in relation to an Entity or a Commonwealth authority, means its annual report (if any) to the responsible Minister relating to its activities, operations, business or affairs.

annual report of Comcare means the annual report on Comcare prepared under section 9 of the *Commonwealth Authorities and Companies Act 1997*.

annual report of the Commission means the annual report of the Commission under section 89S of the *Safety, Rehabilitation and Compensation Act 1988*.

association means an association of employees, a principal purpose of which is the protection and promotion of the employees' interests in matters concerning their employment.

chief executive officer means:

- (a) for a Commonwealth authority—the person (by whatever name called) who is responsible for the administration of the authority; or
- (b) for a non-Commonwealth licensee—the person (by whatever name called) who is primarily and directly responsible to the directors of the licensee for the general and overall management of the licensee.

Comcare means the body corporate established by section 68 of the *Safety, Rehabilitation and Compensation Act 1988*.

Section 5

Commission means the Safety, Rehabilitation and Compensation Commission established by section 89A of the *Safety, Rehabilitation and Compensation Act 1988*.

Commonwealth authority means:

- (a) a body corporate established for a public purpose by or under a law of the Commonwealth or a law of a Territory (other than the Australian Capital Territory, the Northern Territory or Norfolk Island); or
- (b) a body corporate:
 - (i) that is incorporated under a law of the Commonwealth or a State or Territory; and
 - (ii) in which the Commonwealth, or a body corporate referred to in paragraph (a), has a controlling interest; and
 - (iii) that is not a body corporate that the Minister, by notice published in the *Gazette*, has declared not to be a Commonwealth authority for the purposes of this Act; or
- (c) a body corporate:
 - (i) that is incorporated under a law of the Commonwealth or a State or Territory; and
 - (ii) in which the Commonwealth has a substantial interest; and
 - (iii) that is a body corporate that the Minister, by notice published in the *Gazette*, has declared to be a Commonwealth authority for the purposes of this Act; or
- (d) a body corporate:
 - (i) that is not covered by paragraph (a), (b) or (c); and
 - (ii) for which a licence under Part VIII of the *Safety, Rehabilitation and Compensation Act 1988* is in force (whether or not the licence is suspended); and
 - (iii) that was not an eligible corporation for the purposes of that Part when the licence was granted.

Commonwealth authority contractor has the meaning given by section 9A.

Commonwealth authority employee has the meaning given by section 9.

Commonwealth contractor has the meaning given by section 9A.

Commonwealth employee has the meaning given by section 9.

Commonwealth premises means premises owned or occupied by the Commonwealth or by a Commonwealth authority.

contract includes any arrangement or understanding.

contractor has the meaning given by section 9A.

Note: In section 14, the meaning of **contractor** is affected by subsection 14(3).

controlling interest, in relation to a body corporate, means:

- (a) an interest in the body corporate that enables the person holding the interest to:
 - (i) control the composition of the board of directors of the body corporate; or
 - (ii) cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of the body corporate; or
 - (iii) control more than one-half of the issued share capital of the body corporate (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or
- (b) an interest in another body corporate that constitutes, under paragraph (a), a controlling interest in that other body corporate, being:
 - (i) a body corporate that, under paragraph (a), has a controlling interest in the first-mentioned body corporate; or
 - (ii) a body corporate that has such a controlling interest by another application or other applications of this paragraph.

dangerous occurrence means an occurrence, at a workplace, that is declared by the regulations to be a dangerous occurrence for the purpose of this definition.

designated work group means a group of employees established as a designated work group in accordance with section 24, or that designated work group as varied in accordance with that section,

Section 5

and, in relation to an employer, means such a group that consists entirely of employees of that employer.

employee has the meaning given in section 9.

employee representative means:

- (a) in relation to an employee of an employer—a registered organisation of employees, or an association, of which the employee is a member, being an employee who is qualified to be such a member by virtue of the work the employee performs as an employee of the employer; or
- (b) in relation to a designated work group—a registered organisation of employees, or an association, of which an employee included in the group is a member, being an employee who is qualified to be such a member by virtue of the work the employee performs as an employee included in the group.

employer means:

- (a) the Commonwealth; or
- (b) a Commonwealth authority; or
- (c) a non-Commonwealth licensee.

employing authority means:

- (a) in relation to a person who is a Commonwealth employee or a Commonwealth contractor:
 - (i) the person or body specified in the regulations to be the employing authority in relation to that first-mentioned person or in relation to a class of persons that includes that first-mentioned person; or
 - (ii) if the regulations do not so specify a person or body—the principal officer of the Entity for which the first-mentioned person is performing work; or
- (b) in relation to a workplace at which, or any plant, substance or thing with which, a person of the kind first-mentioned in paragraph (a) is performing work for the Commonwealth—the person or body who is, under paragraph (a), the employing authority in relation to that first-mentioned person.

Entity means:

- (a) an Agency, within the meaning of the *Public Service Act 1999*, that is not a Commonwealth authority; or
- (b) a Parliamentary Department within the meaning of the *Parliamentary Service Act 1999*; or
- (c) a person, body, organisation or group of persons prescribed for this paragraph.

Government business enterprise means:

- (a) a Commonwealth authority to which paragraph (a) or (d) of the definition of **Commonwealth authority** applies:
 - (i) that is specified in Schedule 1; or
 - (ii) that the Minister, by instrument published in the *Gazette*, has declared to be a Government business enterprise for the purposes of this Act; or
- (b) a Commonwealth authority to which paragraph (b) or (c) of that definition applies.

health and safety management arrangements means the health and safety management arrangements referred to in paragraph 16(2)(d).

improvement notice means an improvement notice issued under subsection 47(1).

investigation means an investigation conducted under Part 4.

investigator means a person appointed under section 40 to be an investigator.

involved: a person is involved in a breach of a provision if, and only if, the person has:

- (a) aided, abetted, counselled or procured the breach; or
- (b) has induced, whether by threats or promises or otherwise, the breach; or
- (c) has been in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the breach; or
- (d) has conspired with others to effect the breach.

member, in relation to the Commission, has the additional meaning given in subsection (3A).

Section 5

non-Commonwealth licensee means a body corporate:

- (a) for which a licence under Part VIII of the *Safety, Rehabilitation and Compensation Act 1988* is in force (whether or not the licence is suspended); and
- (b) that was an eligible corporation for the purposes of that Part when the licence was granted; and
- (c) that is not a Commonwealth authority for the purposes of this Act.

non-Commonwealth licensee contractor has the meaning given by section 9A.

non-Commonwealth licensee employee has the meaning given by section 9.

non-Commonwealth licensee premises, in relation to a particular non-Commonwealth licensee, means premises owned or occupied by the non-Commonwealth licensee.

own, in relation to a workplace, plant, a substance or a thing, includes own jointly, or own in part, the workplace, plant, substance or thing.

plant includes any machinery, equipment or tool, and any component thereof.

premises includes any place (whether enclosed or built on or not), including a place situated under ground or under water, and, in particular, includes:

- (a) a building, aircraft, vehicle or vessel; and
- (b) any structure, whether a fixed structure, or a moveable structure such as a tent, and whether on land, on the bed of any waters or floating on any waters; and
- (c) a part of premises (including a part of premises of a kind referred to in paragraph (a) or (b)).

principal officer, in relation to a Commonwealth authority, means:

- (a) the person who constitutes, or is acting as the person who constitutes, the authority or, if the authority is constituted by 2 or more persons, the person who is entitled to preside at any meeting of the authority at which he or she is present; or
- (b) if the affairs of the authority are administered or managed by a board or other group of persons—the person who is entitled

to preside at any meeting of that board or other group at which he or she is present.

principal officer, in relation to an Entity, means:

- (a) if the Entity is an Agency that is not a Commonwealth authority—the Agency Head within the meaning of the *Public Service Act 1999*; or
- (b) if the Entity is a Parliamentary Department—the Secretary of the Parliamentary Department within the meaning of the *Parliamentary Service Act 1999*; or
- (c) if the Entity is a person, body, organisation or group of persons prescribed for paragraph (c) of the definition of **Entity**—the person prescribed as the principal officer.

prohibition notice means a prohibition notice issued under subsection 46(1).

registered organisation means:

- (a) an organisation within the meaning of Schedule 1 to the *Workplace Relations Act 1996*; or
- (b) a body that is declared by the regulations to be a registered organisation for the purposes of this Act.

reviewing authority means the Australian Industrial Relations Commission established under section 8 of the *Workplace Relations Act 1996*.

substantial interest, in relation to a body corporate, means an interest (other than a controlling interest) in the body corporate that enables the person holding the interest to cast, or control the casting of, a number of votes at a general meeting of the body corporate that is equal to or greater than the number of votes which may be cast, or whose casting may be controlled, by any other single person.

workplace means:

- (a) any Commonwealth premises in which Commonwealth employees or Commonwealth contractors work; or
- (b) any Commonwealth premises in which Commonwealth authority employees or Commonwealth authority contractors work; or

Section 5

- (c) any non-Commonwealth licensee premises of a non-Commonwealth licensee in which non-Commonwealth licensee employees, or non-Commonwealth licensee contractors, of the licensee work.

However, *workplace* does not include any part of premises that is primarily used as a private dwelling.

- (2) A reference in a particular provision of this Act to the responsible Minister in relation to an employer, other than a Commonwealth authority covered by paragraph (c) or (d) of the definition of ***Commonwealth authority*** in subsection 5(1) or a non-Commonwealth licensee, is a reference:
 - (a) where the employer is the Commonwealth and, in the circumstances set out in that provision, is acting through a particular Entity—to the Minister responsible for that Entity; and
 - (b) where the employer is a Commonwealth authority referred to in paragraph (a) of the definition of ***Commonwealth authority***—to the Minister who is responsible for the administration of the Act or other law under which the Commonwealth authority is established; and
 - (c) where the employer is a Commonwealth authority referred to in paragraph (b) of the definition of ***Commonwealth authority***—to the Minister who is responsible for the administration of the Entity dealing with matters that include the matters for the performance of which the Commonwealth authority was principally incorporated.
- (3) For the purposes of this Act, an employee is to be taken to be at work at all times when the employee is performing work in connection with an undertaking carried on by an employer, whether or not the work is carried out at a workplace.
- (3A) A reference in this Act to a member of the Commission includes a reference to the Chief Executive Officer appointed under section 74 of the *Safety, Rehabilitation and Compensation Act 1988*.
- (4) A reference in this Act to an employee of an employer at a particular workplace is a reference to an employee who works at that workplace in the capacity of an employee of that employer.

- (5) A reference in this Act to an accident includes a reference to the contracting of a disease.
- (6) A reference in this Act to a breach of this Act or to a breach of the regulations includes, where the breach constitutes an offence, a reference to:
- (a) an offence against section 11.1, 11.4 or 11.5 of the *Criminal Code* that relates to the breach; or
 - (b) an offence against section 6 of the *Crimes Act 1914* that relates to the breach.
- (7) Where this Act refers to a Minister, specifying the Minister merely by reference to the Minister administering an Act, the reference to the Minister is to be taken to be a reference to:
- (a) if, for the time being, different Ministers administer the Act in respect of different matters:
 - (i) if 2 or more Ministers administer the Act in respect of the relevant matter—any one of those Ministers; or
 - (ii) if only one Minister administers the Act in respect of the relevant matter—that Minister; or
 - (b) if paragraph (a) does not apply and, for the time being, 2 or more Ministers administer the Act—any one of those Ministers; or
 - (c) if paragraphs (a) and (b) do not apply—the Minister for the time being administering the Act.
- (8) An instrument referred to in the definition of ***Government business enterprise*** in subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

6 Act not to prejudice national security

- (1) Nothing in this Act requires or permits a person to take any action, or to refrain from taking any action, that would be, or could reasonably be expected to be, prejudicial to Australia's national security.
- (2) Without limiting, by implication, the generality of subsection (1), the Director-General of Security may, after consulting with the Minister, by notice in writing, declare that specified provisions of this Act do not apply, or apply subject to such modifications and adaptations as are set out in the declaration, in relation to:

Section 7

- (a) premises or a workplace under the control of the Director-General; or
 - (b) a person who is employed under section 84 of the *Australian Security Intelligence Organisation Act 1979*; or
 - (c) the performance of work by such a person for the purpose of carrying out a function set out in section 17 of that Act;
- and such a declaration has effect accordingly.
- (3) In administering the Australian Security Intelligence Organisation and in the exercise of the power under subsection (2), the Director-General of Security must take into account the need to promote the objects of this Act to the greatest extent consistent with the maintenance of Australia's national security.
 - (4) A notice in writing under subsection (2) is a disallowable instrument for the purpose of section 46A of the *Acts Interpretation Act 1901*.

7 Act not to prejudice Australia's defence

- (1) Nothing in this Act requires or permits a person to take any action, or to refrain from taking any action, that would be, or could reasonably be expected to be, prejudicial to Australia's defence.
- (2) Without limiting, by implication, the generality of subsection (1), the Chief of the Defence Force may, after consulting with the Minister, by notice in writing, declare that specified provisions of this Act do not apply, or apply subject to such modifications and adaptations as are set out in the declaration, in relation to a specified member of the Defence Force, or members of the Defence Force included in a specified class of such members, and such a declaration has effect accordingly.
- (3) In the exercise of the power under subsection (2), the Chief of the Defence Force must take into account the need to promote the objects of this Act to the greatest extent consistent with the maintenance of Australia's defence.
- (4) A notice in writing under subsection (2) is a disallowable instrument for the purpose of section 46A of the *Acts Interpretation Act 1901*.

8 Act not to prejudice certain police operations

- (1) Nothing in this Act requires or permits a person to take any action, or to refrain from taking any action, that would be, or could reasonably be expected to be, prejudicial to an existing or future covert operation or dangerous operation of the Australian Federal Police.

- (2) In this section:

AFP employee has the same meaning as in the *Australian Federal Police Act 1979*.

covert operation means the performance of a function or service under section 8 of the *Australian Federal Police Act 1979* where knowledge of the operation by an unauthorised person, may:

- (a) reduce the effectiveness of the performance of the function or service; or
- (b) expose a person to the danger of physical harm or death arising from the actions of another person.

dangerous operation means the performance of a function or service under section 8 of the *Australian Federal Police Act 1979* in circumstances where exposure of the Commissioner of the Australian Federal Police, a Deputy Commissioner of the Australian Federal Police, or an AFP employee to the danger of serious physical harm or death, other than a danger arising from a cause within the control of the Australian Federal Police, is reasonably necessary for the effective performance of the function or the provision of the service.

unauthorised person in relation to a covert operation, means a person, including an AFP employee, who is not involved in the approval, planning or execution of the operation.

9 Meaning of *employee* etc.

Employee

- (1) An *employee* is:
- (a) a Commonwealth employee (see subsection (1A)); or
 - (b) a Commonwealth authority employee (see subsection (2A));
- or

Section 9

- (c) a non-Commonwealth licensee employee (see subsection (3A)).

Commonwealth employee

- (1A) A **Commonwealth employee** is a person who is employed by the Commonwealth, whether the person is so employed under a law of the Commonwealth or of a Territory or under a contract of service or apprenticeship.
- (2) Without limiting the generality of subsection (1A):
 - (a) the Commissioner of the Australian Federal Police, a Deputy Commissioner of the Australian Federal Police or an AFP employee (all within the meaning of the *Australian Federal Police Act 1979*); or
 - (b) a member of the Defence Force; or
 - (c) a person (other than a person to whom subsection (3) applies) who is the holder of or is acting in:
 - (i) an office established by a law of the Commonwealth, other than an office that is declared by the Minister, by notice in writing, to be an office in relation to which this Act does not apply; or
 - (ii) an office that is established by a law of a Territory (other than the Australian Capital Territory, the Northern Territory or Norfolk Island) and is declared by the Minister, by notice in writing, to be an office in relation to which this Act applies;

is, for the purposes of this Act, to be taken to be employed by the Commonwealth, and the person's employment is, for those purposes, to be taken to be constituted by the person's performance of duties as the Commissioner of the Australian Federal Police, a Deputy Commissioner of the Australian Federal Police or an AFP employee, by the person's performance of duties as such a member of the Defence Force or by the person's performance of the duties of that office, as the case may be.

Commonwealth authority employee

- (2A) A **Commonwealth authority employee** of a particular Commonwealth authority is a person who is employed by the authority, whether the person is so employed under a law of the

Commonwealth or of a Territory or under a contract of service or apprenticeship.

- (3) Without limiting the generality of subsection (2A), a person who:
- (a) constitutes, or is acting as the person constituting, a Commonwealth authority; or
 - (b) is, or is acting as, a member of such an authority; or
 - (c) is, or is acting as, a member of a body established, by or under the Act establishing such an authority, for a purpose associated with the performance of the functions of the authority; or
 - (d) is a deputy of a member referred to in paragraph (b) or (c);
- is, for the purposes of this Act, to be taken to be employed by that authority, and the person's employment is, for those purposes, to be taken to be constituted by the performance of:
- (e) the duties of the authority; or
 - (f) the person's duties as such a member or acting member; or
 - (g) the person's duties as such a deputy;
- as the case may be.

Non-Commonwealth licensee employee

- (3A) Subject to subsection (3B), a ***non-Commonwealth licensee employee*** of a particular non-Commonwealth licensee is a person who is employed by the licensee, whether the person is so employed under a law of the Commonwealth or of a State or Territory, or under a contract of service or apprenticeship.
- (3B) If, under the *Safety, Rehabilitation and Compensation Act 1988*, the licence of a non-Commonwealth licensee covers only some of the people referred to in subsection (1), only such of those people as are covered by the licence are ***non-Commonwealth licensee employees*** of the licensee for the purposes of this Act.

External territory public servants not covered

- (4) This Act does not apply in relation to an officer or employee of the Public Service of an external Territory.

Section 9A

*Minister's power to declare people to be employed by
Commonwealth or Commonwealth authority*

- (5) The Minister may, by notice in writing, declare:
- (a) that a person who is included in a class of persons specified in the notice, being a class of persons who engage in activities or perform acts:
 - (i) at the request or direction, for the benefit, or under a requirement made by or under a law, of the Commonwealth; or
 - (ii) at the request or direction, or for the benefit, of a Commonwealth authority;is, for the purposes of this Act, to be taken to be employed by the Commonwealth, or by that authority, as the case may be; and
 - (b) that the employment of the person is, for those purposes, to be taken to be constituted by the performance by the person of such acts as are specified in the notice;
- and such a declaration has effect accordingly.
- (6) A notice in writing under paragraph (2)(c) or subsection (5) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

9A Meaning of *contractor* etc.

Contractor

- (1) A ***contractor*** is:
- (a) a Commonwealth contractor (see subsection (2)); or
 - (b) a Commonwealth authority contractor (see subsection (3)); or
 - (c) a non-Commonwealth licensee contractor (see subsection (4)).

Note: In section 14, the meaning of ***contractor*** is affected by subsection 14(3).

Commonwealth contractor

- (2) A ***Commonwealth contractor*** is a natural person (other than a Commonwealth employee or a Commonwealth authority employee) who performs work on Commonwealth premises in connection with a contract between:
-

- (a) the Commonwealth; and
- (b) that person or another person (whether a natural person or not);

which is in connection with an undertaking being carried on by the Commonwealth.

Commonwealth authority contractor

- (3) A **Commonwealth authority contractor** of a particular Commonwealth authority is a natural person (other than a Commonwealth employee or a Commonwealth authority employee) who performs work on Commonwealth premises in connection with a contract between:

- (a) the authority; and
- (b) that person or another person (whether a natural person or not);

which is in connection with an undertaking being carried on by the authority.

Non-Commonwealth licensee contractor

- (4) A **non-Commonwealth licensee contractor** of a particular non-Commonwealth licensee is a natural person (other than an employee of the licensee) who performs work on non-Commonwealth licensee premises of the licensee in connection with a contract between:

- (a) the licensee; and
- (b) that person or another person (whether a natural person or not);

which is in connection with an undertaking being carried on by the licensee.

10 Commonwealth to act through employing authority

- (1) For the purposes of this Act and any other law:
 - (a) duties imposed by this Act or the regulations on the Commonwealth as an employer shall, so far as they concern those Commonwealth employees, and those Commonwealth contractors, in relation to whom a particular person or body is the employing authority, be performed by that person or body; and

Section 11

- (b) anything done by that person or body in the capacity of an employing authority has effect as if it had been done by the Commonwealth; and
 - (c) anything served on, or otherwise given or notified to, that person or body in the capacity of an employing authority has effect as if it had been served on, or given or notified to, the Commonwealth.
- (2) For the purposes of this Act and any other law, the duties imposed by this Act on the Commonwealth as an employer must, so far as they concern a workplace, or any plant, substance or thing, in relation to which one or more than one person or body is the employing authority, be performed by that person or body, or jointly by those persons or bodies, as the case requires.

11 Extent to which Act binds the Crown

- (1) This Act binds the Crown in right of the Commonwealth.
- (2) Nothing in this Act has the effect of making the Commonwealth or a Commonwealth authority (other than a Government business enterprise):
- (a) liable to be prosecuted for an offence; or
 - (b) liable to pay any fine or penalty under the Act or the regulations, other than as mentioned in subsection (3).
- (3) Subsection (2) does not prevent the Commonwealth or a Commonwealth authority from being:
- (a) subject to proceedings for a contravention of subclause 2(1) of Schedule 2; or
 - (b) liable to pay a pecuniary penalty under subclause 4(1) of Schedule 2.
- Note: A court may also grant an injunction under clause 14 of Schedule 2, make remedial orders under clause 15 of Schedule 2 or enforce undertakings under clause 16 of Schedule 2.
- (4) Subsection (2) does not prevent the following:
- (a) a Commonwealth employee; or
 - (b) a Commonwealth authority employee (including an employee of a Government business enterprise); or
 - (c) a Government business enterprise;
- from being:

- (d) subject to proceedings for a contravention of subclause 2(1) of Schedule 2; or
- (e) liable to be prosecuted for an offence; or
- (f) liable to pay any fine or penalty under the Act or the regulations.

12 Functions conferred on Commission

- (1) For the purposes of paragraph 89B(c) of the *Safety, Rehabilitation and Compensation Act 1988*, the following additional functions are conferred on the Commission:
 - (a) to ensure, in accordance with this Act and the regulations, that the obligations imposed by or under this Act are complied with;
 - (b) to advise employers, employees or contractors, either on its own initiative or on request, on occupational health and safety matters affecting such employers, employees or contractors (including the matters that should be covered by health and safety management arrangements);
 - (c) to collect, interpret and report information relating to occupational health and safety in the employment of employees;
 - (d) to formulate policies and strategies relating to the occupational health and safety of employees;
 - (e) to advise the Minister:
 - (i) on the most effective means of giving effect to the objects of this Act; and
 - (ii) on the making of regulations under this Act; and
 - (iii) on the approval of codes of practice under section 70;
 - (f) to accredit occupational health and safety training courses for the purposes of section 27;
 - (g) to liaise with other bodies concerned with occupational health and safety;
 - (h) to issue any directions that the Commission considers to be appropriate to employers on the conduct of elections under section 25A for health and safety representatives.
- (2) The Minister may, in writing, give a direction to the Commission concerning the performance of its functions, and the exercise of its

Section 12A

powers, under this Act, and the Commission must comply with any direction so given.

12A Functions conferred on Comcare

- (1) The additional functions conferred on the Commission under paragraph 12(1)(a) do not include the specific functions conferred on Comcare under this Act.
- (2) The Minister may, in writing, give a direction to Comcare with respect to the performance of its functions and the exercise of its powers under this Act.
- (3) Comcare must comply with a direction given under this section.

13 Application of Act to external Territories etc.

- (1) This Act extends to all the external Territories.
- (2) This Act (other than Parts 3 and 4) has extra-territorial operation according to its terms.

14 Application of Act to workplaces controlled by contractors

- (1) Despite anything in this Act, if a workplace is controlled by a contractor for construction or maintenance purposes:
 - (a) this Act, other than section 20, does not apply to that workplace while it is so controlled; and
 - (b) this Act, other than section 20, does not apply to work performed by contractors at that workplace while it is so controlled; and
 - (c) this Act, other than Parts 1 and 2 and section 82, applies to work performed by employees at that workplace while it is so controlled:
 - (i) only if the regulations so provide; and
 - (ii) subject to such modifications and adaptations (if any) as are set out in the regulations.

Note: For the meaning of *contractor*, see section 9A and subsection (3) of this section.

- (2) For the purposes of subsection (1), a workplace is not taken not to be controlled by a contractor simply because of the presence at the workplace of an employee of the employer for which the contractor

is performing work if that employee has no right to direct the work of the persons working for the contractor.

- (3) For the purpose of this section, **contractor** has the meaning given by section 9A, except that:
- (a) it also includes persons who would be contractors under section 9A if references in subsections 9A(2), (3) and (4) to natural persons were extended to also include bodies corporate, other than any body corporate that is a Commonwealth authority or a non-Commonwealth licensee; and
 - (b) it does not include any person who is an employee (as defined in section 9).

15 Application of Act to employees working in non-Commonwealth premises

Where an employee ordinarily performs his or her work at a particular place but that place is neither Commonwealth premises nor non-Commonwealth licensee premises, this Act, other than Parts 1 and 2 and section 82, applies in relation to that employee or to that place of work:

- (a) only if the regulations so provide; and
- (b) subject to such modifications and adaptations (if any) as are set out in the regulations.

15A Application of *Criminal Code*

Chapter 2 of the *Criminal Code* (except Part 2.5) applies to all offences against this Act.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: For the purposes of this Act, corporate criminal responsibility is dealt with by section 78, rather than by Part 2.5 of the *Criminal Code*.

Part 2—Occupational health and safety

Division 1—General duties relating to occupational health and safety

16 Duties of employers in relation to their employees etc.

- (1) An employer must take all reasonably practicable steps to protect the health and safety at work of the employer's employees.

Note: An employer who breaches subsection (1) may be subject to civil action or a criminal prosecution (see Schedule 2).

- (2) Without limiting the generality of subsection (1), an employer breaches that subsection if the employer fails to take all reasonably practicable steps:

- (a) to provide and maintain a working environment (including plant and systems of work):
 - (i) that is safe for the employer's employees and without risk to their health; and
 - (ii) that provides adequate facilities for their welfare at work; and
- (b) in relation to any workplace under the employer's control, to:
 - (i) ensure the workplace is safe for the employees and without risk to their health; and
 - (ii) provide and maintain a means of access to, and egress from, the workplace that is safe for the employees and without risk to their health; and
- (c) to ensure the safety at work of, and the absence of risks at work to the health of, the employees in connection with the use, handling, storage or transport of plant or of substances; and
- (d) to develop, in consultation with the employees of the employer, written health and safety management arrangements that will:
 - (i) enable effective cooperation between the employer and the employees in promoting and developing measures to ensure the employees' health, safety and welfare at work; and

- (ii) provide adequate mechanisms for informing the employees about the arrangements; and
- (iii) provide adequate mechanisms for reviewing the effectiveness of the arrangements; and
- (iv) provide adequate mechanisms for the variation of the arrangements in consultation with the employees; and
- (v) provide for a dispute resolution mechanism to deal with disputes arising in the course of consultations held under this Act (other than section 24) between the employer and the employees; and
- (vi) in the case of an employer who is required under section 34 to establish a health and safety committee—provide for the manner in which the health and safety committee is to be constituted and to operate; and

Note: The establishment of health and safety committees is dealt with in section 34.

- (e) to provide to the employees, in appropriate languages, the information, instruction, training and supervision necessary to enable them to perform their work in a manner that is safe and without risk to their health.
- (2A) An instrument setting out health and safety arrangements developed under subsection (1) is not a legislative instrument.
- (3) Without limiting the matters that may be covered by health and safety management arrangements developed by an employer as mentioned in paragraph (2)(d), such arrangements may provide for the following:
- (a) a written occupational health and safety policy in respect of the employer and the employees of the employer;
 - (b) arrangements relating to risk management;
 - (c) the making of agreements between the employer, the employees of the employer and their employee representatives in relation to:
 - (i) continuing consultation, between the employer, the employees of the employer and their employee representatives on occupational health and safety matters; and
 - (ii) such other matters (if any) as are agreed between the employer, the employees of the employer and their employee representatives;

Section 16A

- (d) training in relation to occupational health and safety.
- (4) The obligations of an employer in respect of the employer's employees that are set out in subsections (1) and (2) apply also in respect of persons who are contractors of that employer but only in relation to:
 - (a) matters over which the employer has control; or
 - (b) matters over which the employer would have had control but for an express provision in an agreement made by the employer with such a contractor to the contrary, being matters over which the employer would, in the circumstances, usually be expected to have had control.
- (5) Without limiting the generality of subsection (1) insofar as that section applies in relation to an employer's employees, the employer breaches that subsection if the employer fails to take all reasonably practicable steps:
 - (a) to take appropriate action to monitor the employees' health and safety at work, and the conditions of the workplaces under the employer's control; or
 - (b) to maintain appropriate information and records relating to the employees' health and safety; or
 - (c) to provide appropriate medical and first aid services for the employees.

16A Development of health and safety management arrangements

- (1) In developing or varying health and safety management arrangements, an employer must have regard to any advice of the Commission on the matter (whether the advice has been given to that employer, or to employers generally).
- (2) An employee of an employer who is holding consultations to develop or vary health and safety management arrangements may be represented in the consultations by one of the following if the employee so requests:
 - (a) another employee of the employer;
 - (b) an employee representative in relation to the employee.
- (3) To avoid doubt, if an employee of an employer is represented under subsection (2), this does not prevent the employee, an

employee mentioned in paragraph (2)(a) or any other employee of the employer from being involved in the consultations.

16B Certificate evidencing employee representative's entitlement to be involved in consultations

- (1) If the Chief Executive Officer of Comcare is satisfied, on application by an employee representative, that an employee in relation to the employee representative has requested:
 - (a) that the employee representative represent the employee in consultations held by an employer in the course of developing or varying health and safety management arrangements; and
 - (b) that the identity of the employee not be revealed;the Chief Executive Officer may issue a certificate to the effect that the employee representative is entitled to represent the employee in such consultations.
- (2) The application must be in the prescribed form.
- (3) The certificate must not identify any of the employees concerned. However, it must identify the employee representative, the employer and the proposed consultations.
- (4) An employee representative in relation to whom a certificate has been issued must not reveal the identity of an employee whom the employee representative is authorised by the certificate to represent.
- (5) The certificate ceases to have effect at the earlier of:
 - (a) the time when the Chief Executive Officer of Comcare considers that each of the employees who requested to be represented by the employee representative in consultations identified by the certificate has requested that the certificate cease to have effect; and
 - (b) the end of the 12 month period that started when the certificate was issued.
- (6) If a certificate ceases to have effect under paragraph (5)(a), the Chief Executive Officer of Comcare must notify the employee representative, and the employer, in writing.
- (7) A notification under subsection (6) is not a legislative instrument.

Part 2 Occupational health and safety

Division 1 General duties relating to occupational health and safety

Section 17

- (8) A certificate is, for all purposes of this Act, prima facie evidence of the matters stated in it.
- (9) The Chief Executive Officer of Comcare may delegate to the Deputy Chief Executive Officer of Comcare his or her power under subsection (1). The delegation must be in writing.
- (10) Nothing in this section implies that an employee representative in respect of whom a certificate has not been issued cannot represent employees in consultations with the employer of those employees.

17 Duty of employers in relation to third parties

An employer must take all reasonably practicable steps to ensure that persons at or near a workplace under the employer's control who are not the employer's employees or contractors are not exposed to risk to their health or safety arising from the conduct of the employer's undertaking.

Note: An employer who breaches section 17 may be subject to civil action or a criminal prosecution (see Schedule 2).

18 Duties of manufacturers in relation to plant and substances

- (1) A manufacturer of any plant that the manufacturer ought reasonably to expect will be used by employees at work must take all reasonably practicable steps:
 - (a) to ensure that the plant is so designed and constructed as to be, when properly used, safe for employees and without risk to their health; and
 - (b) to carry out, or cause to be carried out, the research, testing and examination necessary in order to discover, and to eliminate or minimise, any risk to the health or safety of employees, that may arise from the use of the plant; and
 - (c) to make available to an employer, in connection with the use of the plant by employees at work, adequate information concerning:
 - (i) the use for which it is designed and has been tested; and
 - (ii) details of its design and construction; and

- (iii) any conditions necessary to ensure that, when put to the use for which it was designed and tested, it will be safe for employees and without risk to their health.

Note: A manufacturer who breaches subsection (1) may be subject to civil action or a criminal prosecution (see Schedule 2).

- (2) A manufacturer of any substance that the manufacturer ought reasonably to expect will be used by employees at work must take all reasonably practicable steps:

- (a) to ensure that the substance is so manufactured as to be, when properly used, safe for employees and without risk to their health; and
- (b) to carry out, or cause to be carried out, the research, testing and examination necessary in order to discover, and to eliminate or minimise, any risk, to the health and safety of employees, that may arise from the use of the substance; and
- (c) to make available to an employer, in connection with the use of the substance by employees at work, adequate information concerning:
 - (i) the use for which it is manufactured and has been tested; and
 - (ii) details of its composition; and
 - (iii) any conditions necessary to ensure that, when put to the use for which it was manufactured and tested, it will be safe for employees and without risk to their health; and
 - (iv) the first aid and medical procedures that should be followed if the substance causes injury.

Note: A manufacturer who breaches subsection (2) may be subject to civil action or a criminal prosecution (see Schedule 2).

- (3) Where:

- (a) plant or a substance is imported into Australia by a person who is not the manufacturer of the plant or substance; and
- (b) at the time of the importation the manufacturer of the plant or substance does not have a place of business in Australia;

the first-mentioned person must, for the purposes of this section, be taken to be the manufacturer of the plant or substance.

- (4) Nothing in this section affects the operation of the *Trade Practices Act 1974*, or of any other law of the Commonwealth, a State or a Territory that imposes an obligation on a manufacturer in respect

Section 19

of defective goods or in respect of information to be supplied in relation to goods.

19 Duties of suppliers in relation to plant and substances

- (1) A supplier of any plant or substance that the supplier ought reasonably to expect will be used by employees at work must take all reasonably practicable steps:
- (a) to ensure that, at the time of supply, the plant or substance is in such condition as to be, when properly used, safe for employees and without risk to their health; and
 - (b) to carry out, or cause to be carried out, the research, testing and examination necessary in order to discover, and to eliminate or minimise, any risk, to the health or safety of employees, that may arise from the condition of the plant or substance; and
 - (c) to make available to an employer, in connection with the use of the plant or substance by employees at work, adequate information concerning:
 - (i) the condition of the plant or substance at the time of supply; and
 - (ii) any risk to the health and safety of employees to which the condition of the plant or substance may give rise unless it is properly used; and
 - (iii) the steps that need to be taken in order to eliminate such risk; and
 - (iv) in the case of a substance—the first aid and medical procedures that should be followed in the event of the condition of the substance causing injury to an employee.

Note: A supplier who breaches subsection (1) may be subject to civil action or a criminal prosecution (see Schedule 2).

- (2) For the purposes of subsection (1), where a person (in this subsection called the *ostensible supplier*) supplies to an employer any plant or substance that is to be used by employees at work, and the ostensible supplier:
- (a) carries on the business of financing the acquisition or the use of goods by other persons; and
 - (b) has, in the course of that business, acquired an interest in the plant or substance solely for the purpose of financing its

acquisition by the employer from a third person, or its provision to the employer by a third person; and

- (c) has not taken possession of the plant or substance or has taken possession of the plant or substance solely for the purpose of passing possession of the plant or substance to that employer;

the reference in subsection (1) to a supplier is, in relation to the plant or substance referred to in this subsection, to be read as a reference to the third person and not as a reference to the ostensible supplier.

- (3) Nothing in this section affects the operation of the *Trade Practices Act 1974*, or of any other law of the Commonwealth, a State or a Territory that imposes an obligation in respect of the sale or supply of goods or in respect of the information to be supplied in relation to goods.

20 Duties of person erecting or installing plant in a workplace

- (1) A person who erects or installs any plant in a workplace for the use of employees at work must take all reasonably practicable steps to ensure that the plant is not erected or installed in such a manner that:
- (a) the plant is unsafe for, or constitutes a risk to the health of, employees at the workplace where the plant is erected or installed; or
 - (b) the process of erection or installation is unsafe for, or constitutes a risk to the health of, employees at the workplace where the plant is erected or installed.

Note: A person who breaches subsection (1) may be subject to civil action or a criminal prosecution (see Schedule 2).

- (2) Nothing in this section affects the operation of the *Trade Practices Act 1974*, or of any other law of the Commonwealth, a State or a Territory that imposes an obligation in respect of the erection or installation of goods or the supply of services.

21 Duties of employees in relation to occupational health and safety

- (1) An employee must, at all times while at work, take all reasonably practicable steps:

Part 2 Occupational health and safety

Division 1 General duties relating to occupational health and safety

Section 21

- (a) to ensure that the employee does not take any action, or make any omission, that creates a risk, or increases an existing risk, to the health or safety of the employee, or of other persons (whether employees or not) at or near the place at which the employee is at work; and
- (b) in respect of any duty or obligation imposed on the employee's employer, or on any other person, by or under this Act or the regulations, to co-operate with the employer, or that other person, to the extent necessary to enable the employer or other person to fulfil that duty or obligation; and
- (c) to use equipment, in accordance with any instructions given by the employee's employer consistent with its safe and proper use, that is:
 - (i) supplied to the employee by the employer; and
 - (ii) necessary to protect the health and safety of the employee, or of other persons (whether employees or not) at or near the place at which the employee is at work.

Note: An employee who breaches subsection (1) may be subject to civil action or a criminal prosecution (see Schedule 2).

- (2) Nothing in subsection (1) is to be taken to imply that the choice, or manner of use, or choice and manner of use, of equipment of the kind referred to in subparagraph (1)(c)(ii) is not a matter that may be, consistent with the requirements of this Act and of the regulations:
 - (a) agreed on between the employer and employees (or their representatives under paragraph 16A(2)(a) or (b)) of the employer; or
 - (b) agreed on by a health and safety committee in respect of the employees of the employer.
- (3) Where an agreement of the kind referred to in paragraph (2)(a) (whether or not entered into before the commencement of this section) or of the kind referred to in paragraph (2)(b) provides a process for choosing equipment of a particular kind that is to be provided by the employer, action must not be taken against an employee of the employer for failure to use equipment of that kind that is so provided unless the equipment has been chosen in accordance with that process.

- (4) Where an agreement of the kind referred to in paragraph (2)(a) (whether or not entered into before the commencement of this section) or of the kind referred to in paragraph (2)(b) provides a process for determining the manner of use of equipment of a particular kind, action must not be taken against an employee of the employer for failure to use, in the manner required by the employer, equipment of that kind that is so provided unless the manner has been determined in accordance with that process.

22 Reliance on information supplied or results of research

- (1) Without limiting the generality of what constitutes the taking of reasonably practicable steps as required by section 16 or 17, for the purpose of the application of that section in relation to the use of plant or a substance, a person on whom an obligation is imposed under that section is to be taken to have taken such reasonably practicable steps as that section requires, in relation to the use of the plant or substance, to the extent that:
- (a) the person ensured, as far as is reasonably practicable, that the use of the plant or substance was in accordance with the information, supplied by the manufacturer or the supplier of the plant or substance, relating to health and safety in the use of the plant or substance; and
 - (b) it was reasonable for the person to rely on that information.
- (2) Without limiting the generality of what constitutes the taking of reasonably practicable steps as required by section 20, for the purpose of the application of that section in relation to the erection or installation of plant in a workplace, a person on whom an obligation is imposed under that section is to be taken to have taken such reasonably practicable steps as that section requires to the extent that:
- (a) the person ensured, as far as is reasonably practicable, that the erection or installation of the plant was in accordance with information, supplied by the manufacturer or the supplier of the plant, relating to the erection or installation of the plant in a manner that ensures the health and safety of employees who use the plant; and
 - (b) it was reasonable for the person to rely on that information.
- (3) Without limiting the generality of what constitutes the taking of reasonably practicable steps as required by section 18 or 19 for the

Part 2 Occupational health and safety

Division 1 General duties relating to occupational health and safety

Section 22

purpose of the application of that section in relation to the carrying out of research, testing and examination of plant or a substance, a person on whom an obligation is imposed under that section is to be taken to have taken such reasonably practicable steps as that section requires, in relation to the carrying out of research, testing and examination of the plant or substance, to the extent that:

- (a) the research, testing or examination has already been carried out otherwise than by, or on behalf of, the person; and
- (b) it was reasonable for the person to rely on that research, testing or examination.

Division 2—Specific duties relating to occupational health and safety

23 Regulations relating to occupational health and safety

- (1) Subject to this Act, the regulations may make provisions relating to any matter affecting, or likely to affect, the occupational health and safety of:
 - (a) employees or contractors; or
 - (b) other persons at or near a workplace.
- (2) Without limiting the generality of subsection (1), those regulations may make provision:
 - (a) prohibiting, either absolutely or except in accordance with specified requirements, the performance of all work or specified work at a workplace or by employees or contractors at work; and
 - (b) prohibiting, either absolutely or except in accordance with specified requirements, the use of all plant or specified plant at a workplace or by employees or contractors at work; and
 - (c) prohibiting, either absolutely or except in accordance with specified requirements, the carrying out of all processes or a specified process at a workplace or by employees or contractors at work; and
 - (d) prohibiting, either absolutely or except in accordance with specified requirements, the storage or use of all substances or specified substances at a workplace or by employees or contractors at work; and
 - (e) specifying the form in which information required to be made available to an employer under paragraph 18(1)(c) or 19(1)(c) is to be so made available; and
 - (f) prohibiting, except in accordance with licences granted under the regulations, the use of specified plant or specified substances at a workplace or by employees or contractors at work; and

Section 23A

- (g) providing for the issue, variation, renewal, transfer, suspension and cancellation of such licences, the conditions to which the licences may be subject and the fees payable for the issue, variation or transfer of the licences; and
- (h) regulating the maintenance and testing of plant used at a workplace or by employees or contractors at work; and
- (j) regulating the labelling or marking of substances used at a workplace or by employees or contractors at work; and
- (k) regulating the transport of specified plant that is, or specified substances that are, for use at a workplace or by employees or contractors at work; and
- (m) prohibiting the performance, at a workplace or by employees or contractors at work, of specified activities or work except:
 - (i) by persons who satisfy requirements of the regulations as to qualifications, training or experience; or
 - (ii) under the supervision specified in the regulations; and
- (n) requiring the taking of specified action to avoid accidents or dangerous occurrences; and
- (p) providing for, or prohibiting, the taking of specified action in the event of accidents or dangerous occurrences; and
- (q) providing for the employment at workplaces of persons to perform specified duties relating to the maintenance of occupational health and safety at workplaces; and
- (r) regulating the provision and use, at a workplace or by employees or contractors at work, of protective clothing and equipment, safety equipment and rescue equipment; and
- (s) providing for the monitoring of the health of employees and the conditions at workplaces; and
- (t) requiring the keeping by employers of records of matters related to the occupational health and safety of employees; and
- (u) providing for the provision of first aid equipment and facilities at workplaces.

23A Unlicensed operation of major hazard facility

- (1) A person must not operate a major hazard facility if:
 - (a) the person is required by the regulations to have a licence to operate the facility; and
 - (b) the person does not have such a licence.

Section 23A

Note: A person who contravenes this provision may be subject to civil action (see Schedule 2).

- (2) For the purposes of subsection (1), a *major hazard facility* means a facility that is a major hazard facility within the meaning of the regulations.

Part 3—Workplace arrangements

Division 1—Health and safety representatives

24 Designated work groups

- (1) An employee may request his or her employer to:
 - (a) establish designated work groups in respect of employees of the employer; or
 - (b) vary designated work groups that have already been established.
- (1A) An employee representative in respect of an employee of an employer may, if requested by the employee, request the employer to:
 - (a) establish designated work groups in respect of employees of the employer; or
 - (b) vary designated work groups that have already been established.
- (2) The employer must, within 14 days after receiving a request under subsection (1) or (1A), enter into consultations to establish or vary (as the case requires) designated work groups with:
 - (a) the employer's employees; and
 - (b) if an employee of the employer requests that the employer enter into consultations with an employee representative in relation to the employee—that employee representative.
- (3) If an employer believes that designated work groups should be varied, the employer may at any time enter into consultations about the variation with:
 - (a) the health and safety representative of each designated work group proposed to be varied; and
 - (b) if an employee in a designated work group proposed to be varied requests that the employer also enter into such consultations with an employee representative in relation to the designated work group—that employee representative.
- (4) If, in the course of consultations under subsection (2) or (3), there is a disagreement between any of the parties to the consultation

concerning the manner of establishing or varying a designated work group, any party may, for the purpose of facilitating that consultation, refer the matter of disagreement to the reviewing authority and, where this is done, the parties to the disagreement must complete the consultation in accordance with the resolution of that matter by the reviewing authority.

- (5) Within 14 days after the completion of consultations concerning the establishment of the designated work groups, the employer must, by notifying the employees of the employer, establish the designated work groups in accordance with the outcome of the consultations.
- (6) Within 14 days after the completion of consultations concerning the variation of designated work groups that have already been established, the employer must, if it has been determined that the variation of some or all of those designated work groups is justified, by notifying the employees of the employer who are affected by the variation, vary the designated work groups in accordance with the outcome of the consultations.
- (7) Consultations relating to the establishment or variation of a designated work group must be directed principally at the determination of the manner of grouping employees:
 - (a) that best and most conveniently enables the employees' interests relating to occupational health and safety to be represented and safeguarded; and
 - (b) that best takes account of the need for any health and safety representative selected for that designated work group to be accessible to each employee included in the group;and, for these purposes, the parties to the consultations must have regard, in particular, to:
 - (c) the number of the employees; and
 - (d) the nature of each type of work performed by the employees; and
 - (e) the number and grouping of the employees who perform the same or similar types of work; and
 - (f) the workplaces, and the areas within the workplaces, where each type of work is performed; and
 - (g) the nature of any risks to health and safety at the workplaces; and

Section 24A

- (h) any overtime or shift working arrangements at the workplaces.
- (8) The designated work groups must be established in such a manner that, and must only be varied in such a manner that, so far as is reasonably practicable, each of the employees is included in a designated work group.
- (9) All of an employer's employees may be included in one designated work group.

24A Consultations on designated work groups are health and safety management arrangement consultations

For the purposes of this Act, consultations under section 24 are taken to be consultations to develop health and safety management arrangements. However, for the purposes of developing health and safety management arrangements as described in paragraph 16(2)(d), it is not sufficient for an employer merely to hold consultations under section 24.

24B List of designated work groups

- (1) An employer must:
 - (a) prepare and keep up to date a written list of all designated work groups comprising employees performing work for the employer; and
 - (b) ensure that the list is available for inspection by investigators and the employees at all reasonable times.
- (2) The list must describe the categories of employees included in each designated work group.
- (3) The list is not a legislative instrument.

25 Selection of health and safety representatives

- (1) One health and safety representative may be selected for each designated work group.
- (2) A person is not eligible for selection as the health and safety representative for a designated work group unless the person is an employee included in the group.

Section 25A

- (3) A person is to be taken to have been selected as the health and safety representative for a designated work group if:
 - (a) all of the employees included in the group unanimously agree to the selection of the person as the health and safety representative of the group; or
 - (b) the person is elected as the health and safety representative of the group.
- (4) If a person is selected as the health and safety representative for a designated work group under paragraph (3)(a), the person must, by written notice, inform the employer of the employees in the group of this fact as soon as practicable after the selection is made.
- (5) A notice under subsection (4) is not a legislative instrument.

25A Election of health and safety representatives

- (1) If:
 - (a) there is a vacancy in the office of health and safety representative for a designated work group; and
 - (b) within a reasonable time after the vacancy occurs, a person has not been selected under paragraph 25(3)(a);the employer of the employees in the designated work group must invite nominations from all employees in the group for election as the health and safety representative of the group.
- (2) If the office of health and safety representative is vacant and the employer has not invited nominations within a further reasonable time that is no later than 6 months after the vacancy occurred, the Commission may direct the employer in writing to do so.
- (3) A direction by the Commission under subsection (2) is not a legislative instrument.
- (4) If there is more than one candidate for election at the close of the nomination period, the employer must conduct, or arrange for the conduct of, an election at the employer's expense.
- (5) An election conducted or arranged to be conducted under subsection (4) must be conducted in accordance with regulations made for the purposes of this subsection if this is requested by the lesser of:
 - (a) 100 employees normally in the designated work group; or

Section 25B

- (b) a majority of the employees normally in the designated work group.
- (6) If there is only one candidate for election at the close of the nomination period, that person is taken to have been elected.
- (7) A person cannot be a candidate in the election if he or she is disqualified under section 32.
- (8) All the employees in the designated work group are entitled to vote in the election.
- (9) An employer conducting or arranging for the conduct of an election under this section must comply with any relevant directions issued by the Commission.

25B List of health and safety representatives

- (1) An employer must:
 - (a) prepare and keep up to date a written list of all the health and safety representatives of designated work groups comprising employees performing work for the employer; and
 - (b) ensure that the list is available for inspection by investigators and the employees at all reasonable times.
- (2) The list is not a legislative instrument.

25C Employees must be notified of selection etc. of health and safety representative

- (1) The employer of employees in a designated work group must, by written instrument:
 - (a) notify those employees of a vacancy in the office of health and safety representative for the designated work group within a reasonable time after the vacancy arises; and
 - (b) notify those employees of the name of any person selected (whether under paragraph 25(3)(a) or 25(3)(b)) as health and safety representative for the designated work group within a reasonable time after the selection is made.
- (2) A notification under subsection (1) is not a legislative instrument.

26 Term of office

- (1) A health and safety representative for a designated work group holds office for the period specified in the health and safety management arrangements applying to the employees in the designated work group, but is eligible to be selected for further terms of office.
- (2) If a period is not specified in health and safety management arrangements applying to the designated work group, the term of office is 2 years.
- (3) This section is subject to sections 26A and 31.

26A Casual vacancy

If a person (the *retiring representative*) ceases to hold office as a health and safety representative before the end of the person's term of office, the person selected to fill the vacancy holds office:

- (a) if the vacancy occurred more than 6 months before the retiring representative's term of office ended—for the remainder of the retiring representative's term; and
- (b) if the vacancy occurred within the period of 6 months before the retiring representative's term of office ended—for the remainder of the retiring representative's term and for the next term of office.

27 Training of health and safety representatives

- (1) A health and safety representative for a designated work group must undertake a course of training relating to occupational health and safety that is accredited by the Commission for the purposes of this section.
- (2) The employer of the employees in a designated work group must permit the health and safety representative for the group to take such time off work, without loss of remuneration or other entitlements, as is necessary to undertake the training.

28 Powers of health and safety representatives

- (1) A health and safety representative for a designated work group may, for the purposes of promoting or ensuring the health and safety at work of the employees in the designated work group:
 - (a) in respect of a workplace at which work is performed, for the employer of all of the employees in the group, by some or all of those employees, do all or any of the following:
 - (i) inspect the whole or any part of the workplace if:
 - (A) there has, in the immediate past, been an accident or a dangerous occurrence at the workplace, or there is an immediate threat of such an accident or dangerous occurrence; or
 - (B) the health and safety representative has given the employer reasonable notice of the inspection;
 - (ii) make a request to an investigator, to Comcare or to the Commission that an investigation be conducted at the workplace;
 - (iii) accompany an investigator during any investigation at the workplace by the investigator (whether or not the investigation is being conducted as a result of a request made by the health and safety representative);
 - (iv) if there is no health and safety committee in respect of the employer's employees at the workplace—represent the employees in the group in consultations with the employer concerning the development, implementation and review of measures to ensure the health and safety at work of the employees in the group;
 - (v) where a health and safety committee has been established in respect of the employer's employees at the workplace—examine any of the records of that committee; and
 - (b) investigate complaints made by any of the employees in the group to the health and safety representative concerning the health and safety of any of the employees at work; and
 - (c) with the consent of the employee concerned, be present at any interview, concerning health and safety at work, between an employee in the group and:
 - (i) an investigator; or

- (ii) the employer or a person representing the employer; and
 - (d) obtain access to:
 - (i) any information under the employer's control relating to risks to health and safety of any employees:
 - (A) at any workplace under the employer's control;
or
 - (B) arising from the conduct by the employer of an undertaking or from plant or substances used for the purposes of the undertaking; and
 - (ii) subject to subsection (6), any information under the employer's control relating to the health and safety of any of the employer's employees; and
 - (e) issue provisional improvement notices in accordance with section 29.
- (2) A health and safety representative for a designated work group is entitled, in the exercise of his or her powers, to be assisted by a consultant.
- (3) A health and safety representative for a designated work group must not:
- (a) be assisted by a consultant at a workplace at which work is performed for an employer of the employees in the group; or
 - (b) provide to a consultant information which has been provided to the health and safety representative by an employer under paragraph (1)(d);
- unless the employer or the Commission has, in writing, agreed to the provision of that assistance at that workplace or the provision of that information, as the case may be.
- (4) An employer does not, by reason of the agreement of the employer under subsection (3) to the provision of assistance by a consultant, become liable for any remuneration or other expenses incurred in connection with the consultant's activities.
- (5) Where a health and safety representative for a designated work group is being assisted by a consultant, the consultant is entitled to be present with the representative at any interview, concerning health and safety at work, between an employee in the group and:
- (a) an investigator; or

Section 29

- (b) the employer or a person representing the employer;
if, and only if, the employee concerned consents to the presence of the consultant.
- (6) The health and safety representative is not entitled, or, where the health and safety representative is assisted by a consultant, the health and safety representative and the consultant are not entitled, under subparagraph (1)(d)(ii), to have access:
 - (a) to information in respect of which the employer is entitled to claim, and does claim, legal professional privilege; and
 - (b) to information of a confidential medical nature relating to a person who is or was an employee of the employer unless:
 - (i) the person has delivered to the employer a written authority permitting the health and safety representative, or, the health and safety representative and the consultant, as the case requires, to have access to the information; or
 - (ii) the information is in a form that does not identify the person or enable the identity of the person to be discovered.
- (7) Nothing in this Act is to be read as:
 - (a) imposing an obligation on a person to exercise any power conferred on the person because the person is a health and safety representative; or
 - (b) rendering a person liable in civil proceedings because of:
 - (i) a failure to exercise such a power; or
 - (ii) the manner in which such a power was exercised.

29 Provisional improvement notices

- (1) Where a health and safety representative for a designated work group believes, on reasonable grounds, that a person:
 - (a) is breaching a provision of this Act or the regulations; or
 - (b) has breached a provision of this Act or the regulations and is likely to breach that provision again;being a breach that affects or that may affect one or more employees included in the group, the representative must enter into consultations with the person supervising the work performed by the employee or employees in an attempt to reach agreement on rectifying the breach or preventing the likely breach.

- (2) If, in the health and safety representative's opinion, agreement is not reached within a reasonable time, the health and safety representative may issue a provisional improvement notice to the person (in this section called the *responsible person*) responsible for the breach.
- (3) Where the responsible person is an employer but it is not practicable to issue the notice to the employer by giving it to the employer, the notice may be issued to the employer by giving it to the person who is, or who may reasonably be presumed to be, for the time being, in charge of the activity, undertaken by the employer, in connection with which, in the health and safety representative's opinion, the employer is breaching, or is likely to breach, this Act or the regulations and, where the notice is so issued, a copy of the notice must be given to the employer as soon as practicable thereafter.
- (3A) The notice has effect as soon as it is given to a person in accordance with subsection (2) or (3).
- (4) The notice must:
 - (a) specify the breach of the provision of this Act or the regulations that, in the health and safety representative's opinion, is occurring or is likely to occur, and set out the reasons for that opinion; and
 - (b) specify a period of not less than 7 days commencing on the day after the notice is issued, being a period that is, in the representative's opinion, reasonable, within which the responsible person is to take action necessary to prevent any further breach of the provision or to prevent the likely breach of the provision, as the case may be.
- (5) The notice may specify action that the responsible person is to take during the period specified in the notice.
- (6) Where, in the health and safety representative's opinion, it is appropriate to do so, the representative may, in writing and before the end of the period, extend the period specified in the notice.
- (7) Upon issuing the notice, the health and safety representative must give a copy of the notice to:

Section 29

- (a) where the notice is issued to an employee in connection with work performed by the employee for an employer—that employer; and
 - (b) where the notice relates to any workplace, plant, substance or thing that is owned by a person, not being the responsible person or a person who is an employer referred to in paragraph (a)—that owner; and
 - (c) where the notice is issued to a person (not being an employer) who owns any workplace, plant, substance or thing by reason of which a breach of this Act or the regulations has occurred or is likely to occur—the employer of the employees who work in that workplace or who use that plant, substance or thing.
- (8) Within 7 days after the notice is issued, the responsible person, or any other person, to whom a copy of the notice has been given under subsection (7), may make a request to Comcare or to an investigator that an investigation of the matter the subject of the notice be conducted.
- (9) When a request is made under subsection (8), the operation of the notice is suspended pending the determination of the matter by an investigator.
- (9A) The health and safety representative may request Comcare or an investigator to investigate a matter that is the subject of a notice if:
- (a) the responsible person has not complied with the notice within the period specified in the notice (including any extensions); and
 - (b) an investigation has not been requested under subsection (8).
- (10) As soon as possible after a request (under subsection (8) or (9A)) is made, an investigation must be conducted of the work that is the subject of the disagreement, and the investigator conducting the investigation must:
- (a) confirm, vary or cancel the notice and notify the responsible person and any person to whom a copy of the notice has been given under subsection (2) accordingly; and
 - (b) make such decisions, and exercise such powers, under Part 4, as the investigator considers necessary in relation to the work.

- (11) Where the investigator varies the notice, the notice as so varied has effect, and, except in so far as it imposes additional obligations on the responsible person, is to be taken to have always had effect, accordingly.
- (12) Where the notice is issued to an employer, the employer must:
 - (a) notify each employee who is performing work for the employer and who is affected by the notice of the fact of the issue of the notice; and
 - (b) until the notice ceases to have effect, cause a copy of the notice to be displayed at or near each workplace at which the work that is the subject of the notice is being performed.
- (13) The notice ceases to have effect if:
 - (a) it is cancelled by an investigator or by the health and safety representative; or
 - (b) the responsible person:
 - (i) takes such action, if any, as is specified in the notice; or
 - (ii) if no action is so specified—takes the action necessary to prevent the further breach, or likely breach, with which the notice is concerned.
- (14) The responsible person:
 - (a) must ensure that, to the extent that the notice relates to any matter over which the person has control, the notice is complied with; and
 - (b) must take such steps as are reasonably practicable to inform the health and safety representative who issued the notice of the action taken to comply with the notice.
- (15) For the purposes of section 48, where the investigator confirms or varies the notice, the investigator is to be taken to have decided, under section 47, to issue an improvement notice in those terms.

30 Duties of employers in relation to health and safety representatives

- (1) The employer of all the employees included in a designated work group for which there is a health and safety representative must:
 - (a) upon being requested to do so by the representative, consult with the representative on the implementation of changes at any workplace at which some or all of the employees in the

Section 30

- group perform work for the employer, being changes that may affect the health and safety at work of the employees; and
- (b) in respect of a workplace at which some or all of the employees perform work for the employer:
- (i) permit the health and safety representative to make such inspection of the workplace as the representative is entitled to make in accordance with subparagraph 28(1)(a)(i), and to accompany an investigator during any investigation at the workplace by the investigator; and
 - (ii) where there is no health and safety committee in respect of the employer's employees at the workplace—upon being requested to do so by the health and safety representative, consult with the representative concerning the development, implementation and review of measures to ensure the health and safety at work of those employees; and
- (c) permit the health and safety representative to be present at any interview at which the representative is entitled to be present under paragraph 28(1)(c); and
- (d) subject to subsections (2) and (3), provide to the health and safety representative access to any information to which the representative is entitled to obtain access in accordance with subparagraph 28(1)(d)(i) or (ii) and to which access has been requested; and
- (e) permit the health and safety representative to take such time off work, without loss of remuneration or other entitlements, as is necessary to exercise the powers of a health and safety representative; and
- (f) provide the health and safety representative with access to such facilities as are:
- (i) prescribed for the purposes of this paragraph; or
 - (ii) necessary for the purposes of exercising the powers of a health and safety representative.
- (2) An employer must not permit a health and safety representative to have access to information of a confidential medical nature under the control of the employer, being information relating to a person who is or was an employee of the employer, unless:

- (a) the person has delivered to the employer a written authority permitting the representative to have access to the information; or
 - (b) the information is in a form that does not identify the person or enable the identity of the person to be discovered.
- (3) An employer is not required to provide to a health and safety representative access to any information in respect of which the employer is entitled to claim, and does claim, legal professional privilege.

31 Resignation etc. of health and safety representative

- (1) A person must cease to be the health and safety representative for the designated work group if:
- (a) the person resigns as the health and safety representative; or
 - (b) the person ceases to be an employee included in the designated work group; or
 - (ba) the designated work group is varied under subsection 24(6) and the variation results in a change to the membership of the group; or
 - (c) the person's term of office expires without the person having been selected, under section 25, to be the health and safety representative for the designated work group for a further term; or
 - (d) the person is disqualified under section 32.
- (2) A person may resign as the health and safety representative for a designated work group by notice in writing delivered to the employer of the employees in the group.
- (3) If a person resigns as the health and safety representative for a designated work group, the person must notify the employees included in the group of the resignation.

32 Disqualification of health and safety representatives

- (1) An application for the disqualification of a health and safety representative for a designated work group may be made to the Commission by the employer of all the employees included in the designated work group, or, at the request of an employee in the designated work group, by an employee representative in relation

Section 33

to the designated work group, on one or both of the following grounds:

- (a) that action taken by the representative in the exercise or purported exercise of a power under subsection 28(1) or any other provision of this Act was taken:
 - (i) with the intention of causing harm to the employer or to an undertaking of the employer; or
 - (ii) unreasonably, capriciously or otherwise than for the purpose for which the power was conferred on the representative;
 - (b) that the representative has intentionally used, or disclosed to another person, for a purpose that is not connected with the exercise of a power of a health and safety representative, information acquired from the employer.
- (2) Where, upon an application by an employer under subsection (1), the Commission is satisfied that the health and safety representative has acted in a manner referred to in paragraph (1)(a) or (b), the Commission may, after having regard to:
- (a) the harm (if any) that was caused to the employer or to an undertaking of the employer as a result of the action of the representative; and
 - (b) the past record of the representative in exercising the powers of a health and safety representative; and
 - (c) the effect (if any) on the public interest of the action of the representative; and
 - (d) such other matters as the Commission thinks relevant;
- disqualify the representative, for a specified period not exceeding 5 years, from being a health and safety representative for any designated work group.

33 Deputy health and safety representatives

- (1) One deputy health and safety representative may be selected for each designated work group for which a health and safety representative has been selected.
- (2) A deputy health and safety representative is to be selected in the same manner as a health and safety representative under section 25.

- (2A) If an election for a deputy health and safety representative is to be held, the employer of the employees in the designated work group must invite nominations for the election from all the employees in the designated work group.
- (2B) Subsections 25A(3) to (8) apply to the election.
- Note: Subsections 25A(1) and (2) do not apply in relation to deputy health and safety representatives because the selection of a deputy is optional, not required, for each designated work group.
- (2C) The following provisions apply to a deputy health and safety representative in the same way as they apply to a health and safety representative:
- (a) section 31 (resignation etc. of health and safety representative);
 - (b) section 32 (disqualification of health and safety representatives).
- (3) Where the health and safety representative for a designated work group ceases to be the health and safety representative or is unable (because of absence or for any other reason) to exercise the powers of a health and safety representative:
- (a) the powers may be exercised by the deputy health and safety representative (if any) for the group; and
 - (b) this Act (other than this section) applies in relation to the deputy health and safety representative accordingly.

Division 2—Health and safety committees

34 Health and safety committees

- (1) An employer must, by written instrument, establish a health and safety committee in respect of the employer's employees if the number of the employer's employees is normally not less than 50.
- (2) An employer must also, by written instrument, establish a health and safety committee in respect of the employer's employees in a particular workplace if:
 - (a) the number of the employer's employees in the workplace is normally not less than 50; and
 - (b) either:
 - (i) a health and safety representative of a designated work group comprising employees performing work for the employer in the workplace gives a written request to the employer asking the employer to establish such a committee; or
 - (ii) a majority of the employees in the workplace give a written request to the employer asking the employer to establish such a committee.
- (3) Subject to subsection (4), a health and safety committee established under subsection (1) or (2) is to be constituted and to operate in accordance with the health and safety management arrangements applying to the employer's employees.

Note: Subparagraph 16(2)(d)(vi) requires health and safety management arrangements to provide for the manner in which the health and safety committee is to be constituted and to operate.
- (4) The number of members of a health and safety committee chosen by the employer to represent the interests of the employer must not exceed the number of members chosen by the employees to represent the interests of the employees.
- (5) Nothing in this section prevents an employer from establishing, in consultation with its employees or any other persons, by written instrument:
 - (a) subcommittees of a health and safety committee; or

- (b) committees concerned with occupational health and safety in relation to undertakings carried on by the employer; or
 - (c) other committees concerned, in whole or in part, with occupational health and safety.
- (6) An instrument establishing a health and safety committee under subsection (1) or (2), or a subcommittee or other committee under subsection (5), is not a legislative instrument.

35 Functions of health and safety committees

- (1) A health and safety committee in respect of an employer's employees has the following functions:
- (a) to assist the employer:
 - (i) to develop and implement measures designed to protect; and
 - (ii) to review and update measures used to protect; the health and safety at work of the employees;
 - (b) to facilitate co-operation between the employer and the employees in relation to occupational health and safety matters;
 - (c) to assist the employer to disseminate among the employees, in appropriate languages, information relating to health and safety at work;
 - (d) such functions as are prescribed;
 - (e) such other functions as are agreed upon between the employer and the health and safety committee.
- (2) A health and safety committee has power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions.
- (3) Nothing in this Act is to be read as:
- (a) imposing an obligation on a person to do any act, because the person is a member of a health and safety committee, in connection with the performance of a function conferred on the committee; or
 - (b) rendering such a person liable in civil proceedings because of:
 - (i) a failure to do such an act; or
 - (ii) the manner in which such an act was done.

Section 36

36 Duties of employers in relation to health and safety committees

- (1) Where there is a health and safety committee in respect of employees of an employer, the employer must:
 - (a) subject to subsections (2) and (3), make available to the committee any information possessed by the employer relating to risks to the health and safety of employees:
 - (i) at any workplace under the employer's control; or
 - (ii) arising from the conduct by the employer of an undertaking, or from plant or substances used for the purposes of the undertaking; and
 - (b) permit any member of the committee who is an employee of the employer to take such time off work, without loss of remuneration or other entitlements, as is necessary for the member adequately to participate in the performance by the committee of its functions.
- (2) An employer must not make available to a health and safety committee information of a confidential medical nature relating to a person who is or was an employee of the employer, unless:
 - (a) the person has delivered to the employer an authority permitting the information to be made available to the committee; or
 - (b) the information is in a form that does not identify the person or enable the identity of the person to be discovered.
- (3) An employer is not required to make available to a health and safety committee any information in respect of which the employer is entitled to claim, and does claim, legal professional privilege.

Division 3—Emergency procedures

37 Action by health and safety representatives

- (1) Where a health and safety representative for a designated work group has reasonable cause to believe that there is an immediate threat to the health or safety of one or more of the employees included in the group unless the employee ceases to perform particular work, the representative must:
 - (a) inform a person (in this section called a *supervisor*) supervising the employee or employees in the performance of the work of the threat to health or safety; or
 - (b) if no supervisor can be contacted immediately—direct the employee or employees to cease, in a safe manner, to perform the work, and as soon as practicable inform a supervisor that the direction has been given.
- (2) Where a supervisor is informed under paragraph (1)(a) of a threat to the health and safety of one or more of the employees, the supervisor must take such action as he or she considers appropriate to remove that threat, and any such action may include directing the employee or employees to cease, in a safe manner, to perform the work.
- (3) Where a health and safety representative:
 - (a) is unable to agree with a supervisor whom the representative has informed under paragraph (1)(a) of a threat to the health or safety of persons performing work, and who has taken such action as the supervisor considers appropriate to remove that threat, that the action taken was sufficient to remove that threat; or
 - (b) is unable to agree with a supervisor whom the representative has informed under paragraph (1)(b) that there is a need for a direction under that paragraph;the representative or the supervisor may make a request to Comcare or to an investigator that an investigation be conducted of the work that is the subject of the disagreement.
- (4) As soon as possible after a request is made, an investigation must be conducted of the work that is the subject of the disagreement,

Section 38

and the investigator conducting the investigation must make such decisions, and exercise such powers, under Part 4 as the investigator considers necessary in relation to the work.

38 Directions to perform other work

Where an employee has ceased to perform work, in accordance with a direction by a health and safety representative under paragraph 37(1)(b), not being a cessation of work that continues after:

- (a) the health and safety representative has agreed with a person supervising work at the workplace where the work was being performed, that the cessation of work was not, or is no longer, necessary; or
- (b) an investigator has, under subsection 37(4), made a decision that has the effect that the employee should perform the work;

the employer may direct the employee to perform suitable alternative work, and the employee is to be taken, for all purposes, to be required to perform that other work under the terms and conditions of the employee's employment.

Part 4—Advice, investigations and inquiries

Division 1—Advice

38A Comcare may advise employers etc.

Comcare may advise employers, employees or contractors, either on its own initiative or on request, on occupational health and safety matters affecting those employers, employees or contractors.

39 Referral of persons seeking advice to experts

If:

- (a) Comcare has been requested to advise an employer, employee or contractor about an occupational health and safety matter; and
- (b) Comcare considers that a person other than a member of the staff of, or a consultant to, Comcare has special knowledge or experience relevant to the request;

Comcare may refer the employer, employee or contractor to the person.

Division 2—Investigations

40 Appointment of investigators

- (1) There are to be such investigators as are necessary from time to time.
- (2) Comcare may, by instrument in writing, appoint:
 - (a) a member of the staff of Comcare; or
 - (b) a person having knowledge of, and experience in, matters relating to occupational health and safety;to be an investigator.
- (3) The appointment of a person ceases to have effect if:
 - (a) Comcare revokes the appointment; or
 - (b) the person, by written notice given to Comcare, resigns the appointment.
- (4) The Commission may, by notice published in the *Gazette*, give directions specifying the manner in which, and any conditions subject to which, powers conferred on investigators under this Part are to be exercised and where it does so, the powers of investigators must be exercised in accordance with those directions.
- (5) Comcare may, by notice in writing, impose restrictions, not being restrictions inconsistent with any direction in force under subsection (4), on the powers that are conferred on a particular investigator under this Part, being an investigator who is not a member of the staff of Comcare, and where it does so, the powers of the investigator are, for the purposes of this Act, to be taken to have been restricted accordingly.
- (6) Comcare must issue to an investigator an identity card in a prescribed form.
- (7) An investigator must carry the identity card at all times when exercising powers or performing functions as an investigator.
- (8) The regulations may regulate the appointment, and prescribe the qualifications, of investigators.

41 Investigations

- (1) An investigator who is a member of the staff of Comcare may, at any time, conduct an investigation:
 - (a) to ascertain whether the requirements of, or any requirements properly made under, the Act or the regulations are being complied with; or
 - (b) concerning a breach or possible breach of this Act or the regulations; or
 - (c) concerning an accident or dangerous occurrence that has happened in the performing of work for an employer.
- (2) Comcare or the Commission may direct an investigator who is not a member of the staff of Comcare to conduct an investigation:
 - (a) to ascertain whether the requirements of, or any requirements properly made under, the Act or the regulations are being complied with; or
 - (b) concerning a breach or possible breach of this Act or the regulations; or
 - (c) concerning an accident or dangerous occurrence that has happened in the performing of work for an employer;and the investigator must conduct an investigation accordingly, unless:
 - (d) in the case of a direction given by Comcare—Comcare or the Commission revokes the direction; or
 - (e) in the case of a direction given by the Commission—the Commission revokes the direction.
- (3) Comcare or the Commission may, in writing, direct an investigator, whether a member of the staff of Comcare or not, to conduct an investigation concerning the occupational health and safety policies and practices of an Entity, a Commonwealth authority or a non-Commonwealth licensee, and the investigator must conduct an investigation accordingly, unless:
 - (a) in the case of a direction given by Comcare—Comcare or the Commission revokes the direction; or
 - (b) in the case of a direction given by the Commission—the Commission revokes the direction.
- (4) Before Comcare or the Commission gives a direction under subsection (3), the body about to give the direction must inform the

Section 42

principal officer of the Entity, or the chief executive officer of the Commonwealth authority or of the non-Commonwealth licensee, as the case may be, of:

- (a) the fact that an investigation of the Entity or authority is to be conducted; and
 - (b) the subject matter of the proposed investigation.
- (5) An employee representative in relation to an employee may, if requested by the employee, make a request to Comcare or to the Commission that an investigation be conducted at a workplace at which the employee performs work for an employer.

42 Power of entry

- (1) In conducting an investigation, an investigator may, to the extent that it is reasonably necessary to do so in connection with the investigation, enter, at any reasonable time during the day or night, a workplace and:
- (a) search the workplace; or
 - (b) inspect, examine, take measurements of or conduct tests concerning the workplace or any plant, substance or thing at the workplace; or
 - (c) take photographs, or make sketches, of the workplace or any plant, substance or thing at the workplace.
- (2) Immediately upon entering the workplace, an investigator must take all reasonable steps to notify:
- (a) the person who is for the time being in charge of operations at the workplace; and
 - (b) if there is a health and safety representative for a designated work group in which there is included an employee performing, at the workplace, work to which the investigation may relate—that representative;
- of the purpose for which the investigator has entered the workplace, and must, upon being requested to do so by the person referred to in paragraph (a), produce for inspection by that person:
- (c) the investigator's identity card; and
 - (d) a copy of the Commission's written direction (if any) to conduct the investigation; and
 - (e) a copy of the restrictions (if any) imposed on the powers of the investigator under subsection 40(5).

- (3) Where an investigator who has entered a workplace fails to produce documents for inspection as required by subsection (2) upon being requested to do so in accordance with that subsection, the investigator ceases to be entitled to remain at the workplace.

43 Power to require assistance and information

- (1) An investigator may, to the extent that it is reasonably necessary to do so in connection with the conduct of an investigation, require:
- (a) the principal officer of an Entity or the chief executive officer of a Commonwealth authority or of a non-Commonwealth licensee; or
 - (b) any person representing a principal officer or chief executive officer; or
 - (c) any owner or occupier of a workplace at which the investigation is being conducted; or
 - (d) any employee or contractor;
- to give to the investigator reasonable assistance, to answer any questions put by the investigator, and to give to the investigator any documents requested by the investigator or copies of such documents, in connection with the conduct of the investigation.

- (2) A person must comply with a requirement made of the person under subsection (1).

Note: A person who breaches subsection (2) may be subject to civil action or a criminal prosecution (see Schedule 2).

- (3) If a person gives an investigator documents or copies of documents under subsection (1), the investigator must return them to the person as soon as practicable after:
- (a) they are no longer needed in connection with the conduct of the investigation; and
 - (b) either:
 - (i) a decision is made by the investigator not to use the documents or copies in evidence for proceedings for an offence against this Act or the regulations; or
 - (ii) the documents or copies have been used in such proceedings.

Section 44

44 Power to take possession of plant, take samples of substances etc.

- (1) In conducting an investigation, an investigator may, to the extent that it is reasonably necessary for the purposes of inspecting, examining, taking measurements of or conducting tests concerning, any plant, substance or thing at a workplace in connection with the investigation:
 - (a) take possession of the plant, substance or thing and remove it from the workplace; or
 - (b) take a sample of the substance or thing and remove that sample from the workplace.
- (2) Upon taking possession of plant, a substance or a thing, or taking a sample of a substance or thing, the investigator shall, by notice in writing, inform:
 - (a) the employer for which work is performed using the plant, substance or thing; and
 - (b) where the plant, substance or thing is owned by a person other than an employer—that person; and
 - (c) if there is a health and safety representative for a designated work group in which there is included an employee performing, at the workplace, work to which the investigation relates—that representative;of the taking of possession or the taking of the sample, as the case may be, and the reasons for it.
- (3) Where an investigator gives a notice to an employer under subsection (2) concerning any plant, substance or thing of which the investigator has taken possession, the employer must cause a copy of the notice to be displayed in a prominent place at the workplace from which the plant, substance or thing was removed.
- (4) Where the investigator takes possession of plant, a substance or a thing at a workplace for the purpose of inspecting, examining, taking measurements of or conducting tests concerning, the plant, substance or thing, the investigator must:
 - (a) ensure that the inspection, examination, measuring or testing is conducted as soon as is reasonably practicable after the investigator takes possession of the plant, substance or thing; and

- (b) return the plant, substance or thing to the workplace as soon as is reasonably practicable after the inspection, examination, measuring or testing has been completed.
- (5) As soon as is reasonably practicable after the completion of any such inspection, examination, measurement or testing, the investigator must give, to each person to whom the investigator is required under subsection (2) to notify of the removal, a written statement setting out the results of the inspection, examination, measurement or testing.

45 Power to direct in writing that workplace etc. not be disturbed

- (1) In conducting an investigation, an investigator may, if he or she is satisfied that it is reasonably necessary to give a direction under this subsection in order to:
 - (a) remove an immediate threat to the health or safety of any person; or
 - (b) allow the inspection, examination or taking of measurements of, or conducting of tests concerning, a workplace or any plant, substance or thing at a workplace;direct, by written notice given to the person who is, or who may reasonably be presumed to be, for the time being in charge of operations at the workplace, that the person ensure that:
 - (c) a particular workplace, or a specified part of a particular workplace; or
 - (d) particular plant, or a particular substance or thing;not be disturbed for the period, specified in the direction, that is, in the investigator's opinion, necessary in order to remove the threat or to allow the inspection, examination, measuring or testing to take place.
 - (2) The direction may be renewed by the giving of another direction under subsection (1) in the same terms.
 - (3) Where an investigator gives a notice to a person under subsection (1), that person must cause the notice to be displayed in a prominent place at the workplace:
 - (a) that is, or a specified part of which is, under the notice, to be left undisturbed; or
 - (b) at which the plant, substance or thing that is, under the notice, to be left undisturbed, is located;
-

Section 45

until the direction has expired, been revoked or been varied.

- (4) As soon as is reasonably practicable after giving the direction, the investigator must take all reasonable steps to notify:
- (a) where the workplace, plant, substance or thing to which the direction relates is owned by a person other than an employer—that person; and
 - (b) if there is a health and safety representative for a designated work group in which there is included an employee performing work:
 - (i) at a workplace or a part of a workplace; or
 - (ii) involving the plant, substance or thing; to which the direction relates—that representative;
- of the giving of the direction and the reasons for giving the direction.
- (5) An employer who has control over the workplace, plant, substance or thing to which the direction relates, and whose employees use the workplace, plant, substance or thing in the performance of work for the employer, must ensure the direction is complied with.
- Note: An employer who breaches subsection (5) may be subject to civil action or a criminal prosecution (see Schedule 2).
- (6) The direction must include the reasons for the giving of the direction.
- (7) An investigator may revoke or vary a direction given under this section by giving a written notice to that effect to the person who is, or who may reasonably be presumed to be, for the time being in charge of operations at the workplace.
- (8) If a direction is varied:
- (a) a copy of the text of the original direction and any variations to it must be included in the notice; and
 - (b) the person to whom the written notice is given must cause that notice to be displayed in a prominent place at the workplace:
 - (i) that is, or a specified part of which is, under the notice, to be left undisturbed; or
 - (ii) at which the plant, substance or thing that is, under the notice, to be left undisturbed, is located;

until the direction has expired, been revoked or been varied;
and

- (c) the investigator must take all reasonable steps to notify people who were notified of the giving of the direction under subsection (1) of the variation of the direction and the terms of the varied direction.

45A Power to direct orally that workplace etc. not be disturbed

- (1) An investigator may orally direct the person who is, or who may reasonably be presumed to be, for the time being in charge of operations at the workplace to ensure that a workplace, a part of a workplace, plant, a substance or a thing not be disturbed for a specified period if the investigator:
 - (a) considers on reasonable grounds that it is necessary to give the oral direction in order to:
 - (i) remove an immediate threat to the health or safety of any person; or
 - (ii) allow the inspection, examination or taking of measurements of, or conducting of tests concerning, a workplace or any plant, substance or thing at a workplace; and
 - (b) considers on reasonable grounds that there is not adequate time available to make a direction by written notice under section 45.
- (2) The specified period:
 - (a) must be no longer than the period that the investigator considers on reasonable grounds is necessary in order to remove the threat or to allow the inspection, examination, measuring or testing to take place; and
 - (b) must end no later than 48 hours after the direction is given.
- (3) An employer who has control over the workplace, plant, substance or thing to which the direction relates, and whose employees use the workplace, plant, substance or thing in the performance of work for the employer, must ensure the direction is complied with.

Note: If an employer breaches subsection (3), the employer may be subject to civil action or a criminal prosecution (see Schedule 2).
- (4) The oral direction ceases to have effect at the earliest of the following times:

Section 46

- (a) the time when the specified period under subsection (2) ends;
 - (b) the time when the oral direction is revoked under subsection (5);
 - (c) the time when a direction under section 45 is given if that direction is made for the purposes of the same investigation and in respect of:
 - (i) the same workplace, part of a workplace, plant, substance or thing; and
 - (ii) the same threat, inspection, examination, measuring or testing;as the oral direction.
- (5) The direction may be revoked by informing the person who is for the time being in charge of operations at the workplace that the direction is revoked.
- (6) The direction cannot be renewed or varied and no other direction under this section may be made for the purposes of the same investigation and in respect of:
- (a) the same workplace, part of a workplace, plant, substance or thing; and
 - (b) the same threat, inspection, examination, measuring or testing;
- as the first-mentioned direction.

46 Power to issue prohibition notices

- (1) Where, having conducted an investigation, an investigator forms the opinion that it is reasonably necessary to issue a prohibition notice to an employer in order to remove an immediate threat to the health or safety of any person, the investigator may issue such a notice, in writing, to the employer.
- (2) The notice must be issued to the employer by giving it to the person who is, or who may reasonably be presumed to be, for the time being in charge of the activity, undertaken by the employer, in respect of which, in the investigator's opinion, the threat to health or safety has arisen.

- (3) The notice must:
- (a) specify the activity in respect of which, in the investigator's opinion, the threat to health or safety has arisen, and set out the reasons for that opinion; and
 - (b) either:
 - (i) direct the employer to ensure that the activity is not engaged in; or
 - (ii) direct the employer to ensure that the activity is not engaged in in a specified manner, being a manner that may relate to any one or more of the following:
 - (A) any workplace, or part of a workplace, at which the activity is not to be engaged in;
 - (B) any plant or substance that is not to be used in connection with the activity;
 - (C) any procedure that is not to be followed in connection with the activity; and
 - (c) specify a period for compliance with the notice that the investigator considers on reasonable grounds is sufficient to enable compliance.
- (4) The employer must ensure that, to the extent that the notice relates to any matter over which the employer has control, the notice is complied with.
- Note: An employer who breaches subsection (4) may be subject to civil action or a criminal prosecution (see Schedule 2).
- (5) Where an investigator is satisfied that action taken by an employer to remove the threat to health and safety that caused the notice to be issued is not adequate to remove that threat, the investigator must inform the employer accordingly.
- (6) The notice ceases to have effect when:
- (a) an investigator notifies the employer that the investigator considers that the employer has taken adequate action to remove the threat to health or safety that caused the notice to be issued; or
 - (b) the notice is revoked under subsection (11).
- (7) In making a decision under subsection (5), an investigator may exercise such of the powers of an investigator conducting an

Section 46

investigation as the investigator considers necessary for the purposes of making the decision.

- (8) The notice may specify action that may be taken in order to satisfy an investigator that adequate action has been taken to remove the threat to health and safety that caused the notice to be issued.
- (9) The employer must:
 - (a) give a copy of the notice to each health and safety representative (if any) for a group of the employer's employees performing work that is affected by the notice; and
 - (b) cause a copy of the notice to be displayed, until the notice has expired, been revoked or been varied, in a prominent place at or near each workplace at which that work is being performed.
- (10) Where the notice relates to any workplace, plant, substance or thing that is owned by a person other than an employer, the investigator must, upon issuing the notice, give a copy of the notice to that person.
- (11) An investigator may revoke or vary a notice (the *original notice*) given under this section by giving a written notice (the *new notice*) to that effect to the person who is, or who may be presumed on reasonable grounds to be, for the time being in charge of the activity in respect of which the original notice was issued.
- (12) If the original notice is varied:
 - (a) the new notice must set out the text of the original notice and the variations to it; and
 - (b) the text of the new notice must specify a period for compliance with the new notice that the investigator considers on reasonable grounds is sufficient to enable compliance; and
 - (c) the employer must cause a copy of the new notice to be displayed, until the new notice has expired, been revoked or been varied, in a prominent place at or near each workplace at which work affected by the notice is being performed; and
 - (d) the investigator and employer must take all reasonable steps to give a copy of the new notice to each person to whom they gave copies of the original notice.

47 Power to issue improvement notices

- (1) Where, having conducted an investigation, an investigator forms the opinion that a person:
 - (a) is breaching a provision of this Act or the regulations; or
 - (b) has breached a provision of this Act or the regulations and is likely to breach that provision again;the investigator may issue an improvement notice, in writing, to the person (in this section called the *responsible person*).
- (2) Where the responsible person is an employer but it is not reasonably practicable to issue the notice to the employer by giving it to the employer, the improvement notice may be issued to the employer by giving it to the person who is, or who may reasonably be presumed to be, for the time being in charge of the activity, undertaken by the employer, in connection with which, in the investigator's opinion, the employer is breaching, or is likely to breach, this Act or the regulations and, where the notice is so issued, a copy of the notice must be given to the employer as soon as practicable thereafter.
- (2A) The notice has effect as soon as it is given to a person under subsection (1) or (2).
- (3) The notice must:
 - (a) specify the breach of the provision of this Act or the regulations that, in the investigator's opinion, is occurring or is likely to occur, and set out the reasons for that opinion; and
 - (b) specify a period, being a period that is, in the investigator's opinion, reasonable, within which the responsible person is to take the action necessary to prevent any further breach of the provision or to prevent the likely breach of the provision, as the case may be.
- (4) The notice may specify action that the responsible person is to take during the period specified in the notice under paragraph (3)(b).
- (5) Where, in the investigator's opinion, it is appropriate to do so, the investigator may, in writing and before the end of the period, extend the period specified in the notice.

Section 47

- (6) The responsible person must ensure that, to the extent that the notice relates to any matter over which the person has control, the notice is complied with.

Note: A responsible person who breaches subsection (6) may be subject to civil action or a criminal prosecution (see Schedule 2).

- (8) Where the notice is issued to an employer, the employer must:
- (a) give a copy of the notice to each health and safety representative for a designated work group of the employer's employees performing work that is affected by the notice; and
 - (b) cause a copy of the notice to be displayed, until the notice has expired, been revoked or been varied, in a prominent place at or near each workplace at which that work is being performed.

- (9) Upon issuing the notice, the investigator must give a copy of the notice to:

- (a) where the notice is issued to an employee in connection with work performed by the employee for an employer—that employer; and
- (b) where the notice relates to any workplace, plant, substance or thing that is owned by a person, not being the responsible person or a person who is an employer referred to in paragraph (a)—that owner; and
- (c) where the notice is issued to a person (not being an employer) who owns any workplace, plant, substance or thing by reason of which a breach of this Act or the regulations has occurred or is likely to occur—the employer of the employees who work in that workplace or who use that plant, substance or thing.

- (10) An investigator may revoke or vary a notice (the *original notice*) given under this section by giving a written notice (the *new notice*) to that effect to the person who is, or who may reasonably be presumed to be, for the time being in charge of the activity in respect of which the original notice was issued.

- (11) If the original notice is varied:

- (a) the new notice must set out the text of the original notice and the variations to it; and

- (b) the text of the new notice must specify a period that the investigator considers is reasonable, within which the employer must comply with the new notice; and
- (c) the employer must cause a copy of the new notice to be displayed, until the new notice has expired, been revoked or been varied, in a prominent place at or near each workplace at which work affected by the new notice is being performed; and
- (d) the investigator and employer must take all reasonable steps to give a copy of the new notice to each person to whom they gave copies of the original notice.

48 Appeals

- (1) Where an investigator, in conducting an investigation or having conducted an investigation:
 - (a) decides, under section 29, to confirm or vary a provisional improvement notice; or
 - (b) decides, under section 44, to take possession of plant, a substance or a thing at a workplace; or
 - (c) decides, under section 45, to direct that a workplace, a part of a workplace, plant, a substance or a thing not be disturbed; or
 - (ca) decides, under section 45, to revoke or vary a direction that a workplace, a part of a workplace, plant, a substance or a thing not be disturbed; or
 - (cb) decides, under section 45A, to direct that a workplace, a part of a workplace, plant, a substance or a thing not be disturbed; or
 - (d) decides, under section 46, to issue a prohibition notice; or
 - (da) decides, under section 46, to revoke or vary a prohibition notice; or
 - (e) decides, under section 46, that an employer to whom a prohibition notice has been issued has not taken adequate action to remove the threat to health and safety that caused the notice to be issued; or
 - (f) decides, under section 47, to issue an improvement notice; or
 - (fa) decides, under section 47, to revoke or vary an improvement notice;

an appeal against the decision may be made, by notice in writing, to the reviewing authority by:

Section 48

- (g) an employer affected by the decision; or
 - (h) a person to whom a notice has been issued under subsection 29(2) or 47(1); or
 - (j) the health and safety representative for a designated work group in which is included an employee affected by the decision; or
 - (l) an employee representative in relation to the designated work group that includes an employee affected by the decision who has requested the employee representative to make the appeal; or
 - (m) if there is no such designated work group and an employee affected by the decision has requested an employee representative in relation to the employee to make the appeal—that employee representative; or
 - (n) a person who owns any workplace, plant, substance or thing to which the decision referred to in paragraph (a), (b), (c) or (f) relates.
- (2) Where an investigator, having conducted an investigation:
- (a) decides, under section 29 to cancel a provisional improvement notice; or
 - (b) decides, under section 46, that an employer to which a prohibition notice has been issued has taken adequate action to remove the threat to health and safety that caused the notice to be issued;
- an appeal against a decision may be made, by notice in writing, to the reviewing authority by:
- (c) the health and safety representative for a designated work group in which is included an employee affected by the decision; or
 - (d) if an employee affected by the decision has requested an employee representative in relation to the designated work group to make the appeal—that employee representative; or
 - (e) if there is no such designated work group and an employee affected by the decision has requested an employee representative in relation to the employee to make the appeal—that employee representative.
- (3) Subject to this section, the making of an appeal against a decision referred to in subsection (1) or (2) does not affect the operation of the decision or prevent the taking of action to implement the
-

decision, except to the extent that the reviewing authority makes an order to the contrary.

- (4) Where the decision appealed against is a decision, under section 47, to issue an improvement notice, the operation of the decision is suspended pending determination of the appeal, except to the extent that the reviewing authority makes an order to the contrary.
- (5) Where the decision appealed against is a decision of an investigator, under section 29, to confirm or vary a provisional improvement notice the operation of which has been suspended pending the investigation of the matter to which the notice relates by the investigator, the operation of the notice is further suspended pending determination of the appeal, except to the extent that the reviewing authority makes an order to the contrary.
- (6) The reviewing authority may affirm or revoke the decision appealed against under subsection (1) or (2) and may, if it revokes the decision, substitute for the decision such other decision, being a decision of the kind appealed against, as it thinks appropriate.
- (7) Where the decision is varied, revoked or revoked with the substitution of another decision, the decision is to be taken to have effect, and to always have had effect, accordingly.
- (8) Where the decision appealed against is a decision, under section 44, to take possession of plant, substance or a thing at a workplace, and the decision is not affirmed, the investigator who made the decision must ensure that, to the extent that the decision is not affirmed, the plant, substance or thing is returned to the workplace as soon as is reasonably practicable.

49 Liability of investigators

An investigator is not subject to any civil liability in respect of any act done, in good faith, in connection with:

- (a) the conduct of an investigation by the investigator; or
- (b) the exercise of any of his or her powers under this Part in relation to the investigation.

Section 50

50 Notices not to be tampered with or removed

A person must not:

- (a) tamper with any notice, or copy of a notice, that has been displayed under subsection 44(3), 45(3), 45(8), 46(9), 46(12), 47(8) or 47(11) while that notice is so displayed; or
- (b) remove any notice, or copy of a notice, that has been so displayed:
 - (i) in the case of a notice displayed under subsection 44(3)—until the plant or thing to which the notice relates is returned to the workplace from which it was removed; or
 - (ii) in the case of a notice displayed under subsection 45(3), 45(8), 46(9), 46(12), 47(8) or 47(11)—before the notice, or direction to which the notice relates, as the case requires, has expired or been revoked or a new notice issued following the variation of the notice or direction.

Note: A person who breaches section 50 may be subject to a criminal prosecution (see Schedule 2).

51 Arrangements with States for services of State officers

Arrangements may be made in accordance with section 71 of the *Public Service Act 1999* for officers of the Public Service of a State or Territory to exercise the powers and perform the duties of investigators under this Part.

Division 3—Inquiries and reports

52 Application

This Division (other than section 53) does not apply to a Government business enterprise or a non-Commonwealth licensee.

53 Report of investigation

- (1) Where an investigator has conducted an investigation, the investigator must, as soon as is reasonably practicable, prepare a written report relating to the investigation and give the report to the Commission.
- (2) The report must include:
 - (a) the investigator's conclusions from conducting the investigation and the reasons for those conclusions; and
 - (b) any recommendations that the investigator wishes to make arising from the investigation or those conclusions; and
 - (c) such other matters, if any, as are prescribed.
- (3) As soon as is reasonably practicable after receiving the report, the Commission must:
 - (a) give a copy of the report, together with any written comments that it wishes to make, to the employer; and
 - (b) if the employer is the Commonwealth or a Commonwealth authority and the Commission thinks it appropriate to do so—give a copy of the report, together with those comments (if any), to the responsible Minister in relation to the employer.
- (4) The Commission may, in writing, request the employer to provide to the Commission, within a reasonable period specified in the request, particulars of:
 - (a) any action that is proposed to be taken as a result of the conclusions or recommendations contained in the report; and

Section 54

- (b) where a notice has been issued under section 46 or 47 in relation to work being performed for the employer—any action that has been taken, or that is proposed to be taken, in respect of that notice;and the employer must comply with the request.
- (5) As soon as is reasonably practicable after the receipt of a report, the employer must give a copy of the report together with any written comment made by the Commission relating to the report:
 - (a) if there is at least one health and safety committee established in respect of some or all of the employer's employees to whose work the report relates—to each such committee; and
 - (b) if there is no such committee established in respect of some or all of the employer's employees to whose work the report relates, but some or all of those employees (in respect of which there is no such committee) are included in at least one designated work group for which there is a health and safety representative—to each such health and safety representative.

54 Power to obtain information and documents

- (1) Where the Commission has reason to believe that a person is capable of giving information or producing documents relevant to a matter dealt with in a report under subsection 53(1), the Commission may, at any time after receiving the report and before commencing an inquiry under section 55, by notice in writing served on that person, require that person at such place, and within such period or on such date and at such time, as are specified in the notice, to give to the Commission any such information or to produce to the Commission any such documents.
- (2) A person must comply with a requirement under subsection (1).

Note: A person who breaches subsection (1) may be subject to a criminal prosecution (see Schedule 2).

55 Commission may conduct public inquiry

- (1) The Commission may, at any time after receiving a report under subsection 53(1) and before preparing a report under section 65, conduct an inquiry into any matter arising out of the first-mentioned report.

- (2) The Commission may hold the whole or any part of an inquiry in private if, in the opinion of the Commission, it is necessary or desirable in the public interest to do so.
- (3) Where proceedings are held in private, the Commission may inform itself on any matter in such manner as it thinks fit.
- (4) Where proceedings are held in public:
 - (a) evidence in the proceedings must, subject to this subsection, be taken on oath or affirmation; and
 - (b) the Commission may, if it thinks fit, permit a person appearing as a witness to give evidence by tendering, and verifying by oath or affirmation, a written statement; and
 - (c) where the Commission considers that the attendance of a person as a witness would cause serious hardship to the person, the Commission may permit the person to give evidence by sending to the Commission a written statement, verified in such manner as the Commission directs; and
 - (d) where evidence is given by a written statement in accordance with paragraph (b) or (c), the Commission must make available to the public in such manner as the Commission thinks fit the contents of the statement, other than any matter as to which the Commission is satisfied that its publication would be contrary to the public interest by reason of its confidential nature or any other reason.
- (5) Subject to this section:
 - (a) the procedure to be followed at an inquiry is within the discretion of the Commission; and
 - (b) the Commission is not bound by the rules of evidence.

56 Power to summon witnesses

A member of the Commission may, by instrument in writing, summon a person to appear before the Commission at a time and place specified in the summons to give evidence and produce such documents (if any) as are referred to in the summons.

57 Failure of witness to attend

- (1) A person served with a summons under section 56 must not:
 - (a) fail to attend as required by the summons; or

Section 58

- (b) fail to appear and report from day to day.

Note: A person who breaches section 57 may be subject to a criminal prosecution (see Schedule 2).

58 Power to administer oath or affirmation

A member of the Commission may administer an oath or affirmation to a person appearing as a witness.

59 Failure to be sworn or to answer questions

- (1) A person appearing as a witness must not:
 - (a) fail to comply with a requirement by a member of the Commission to be sworn or to make an affirmation; or
 - (b) fail to answer a question that he or she is required to answer by a member of the Commission; or
 - (c) fail to produce a document that he or she was required to produce by a summons served on him or her.

Note: A person who breaches section 59 may be subject to a criminal prosecution (see Schedule 2).

60 Protection of members and witnesses

- (1) A member of the Commission has, in the exercise of powers and the performance of duties and functions as a member in relation to an inquiry, the same protection and immunity as a Justice of the High Court.
- (2) Subject to this Act, a person appearing as a witness has the same protection, and is, in addition to the penalties provided by this Act, subject to the same liabilities, as a witness in proceedings in the High Court.

61 Contempt of Commission

A person must not:

- (a) insult or disturb a member of the Commission in the exercise of his or her powers or the performance of his or her functions or duties as a member of the Commission; or
- (b) interrupt an inquiry; or
- (c) use insulting language towards a member of the Commission;
or

- (d) create a disturbance, or take part in creating or continuing a disturbance, in a place where the Commission is holding an inquiry; or
- (e) do any other act or thing that would, if the Commission were a court of record, constitute a contempt of that court.

Note: A person who breaches section 61 may be subject to a criminal prosecution (see Schedule 2).

62 Powers of Commission in relation to documents produced

- (1) A member of the Commission may inspect any books or documents furnished to the Commission for the purposes of the performance of its functions under this Act or produced at an inquiry and may make copies of, or take extracts from, those books or documents.
- (2) A book or document so furnished may be retained by the Commission for such reasonable period as is necessary for the purposes of the Commission, but during that period the Commission must permit a person otherwise entitled to possession of the book or document to inspect, make copies of, and take extracts from, the book or document at such places and times as the Commission thinks appropriate.

63 Allowances to witnesses

A person served with a summons under section 56 is entitled to be paid by the Commonwealth such allowances for travelling and other expenses as are prescribed.

64 Witness not to be prejudiced in employment

An employer must not:

- (a) dismiss, or threaten to dismiss, an employee from his or her employment; or
- (b) do an act that results in an employee being injured in his or her employment; or
- (ba) threaten to injure an employee in his or her employment; or
- (c) prejudice, or threaten to prejudice, an employee in his or her employment;

because the employee:

Section 65

- (d) has appeared, or proposes to appear, as a witness at an inquiry; or
- (e) has given, or proposes to give, any evidence at an inquiry.

Note: A person who breaches section 64 may be subject to a civil action (see Schedule 2).

65 Report to be given to Minister in certain circumstances

- (1) Where, under subsection 53(4), the Commission has made a request to an employer for particulars of any action proposed to be taken as a result of conclusions or recommendations contained in a report under section 53 or taken or proposed to be taken in respect of a notice issued under section 46 or 47 and:
 - (a) the employer fails, without reasonable excuse, to provide the particulars within the period specified in the request; or
 - (b) the action taken or proposed to be taken is not, in the Commission's opinion, adequate having regard to the duties imposed by the Act and the regulations; or
 - (c) so far as action not yet taken is concerned—the Commission forms the opinion that the action proposed to be taken as a result of the conclusions or recommendations contained in the report, or proposed to be taken in respect of a notice issued under section 46 or 47, has not been taken within a reasonable time;the Commission may prepare and give to the Minister a report to this effect, being a report that includes:
 - (d) a copy of the report under section 53; and
 - (e) a copy of any response by the employer to that request; and
 - (f) where the Commission has conducted an inquiry under section 55—the findings of that inquiry.
- (2) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the report is given to the Minister.

66 Report to be given to Minister of failures to comply with directions etc.

- (1) Where the Commission forms the opinion that an employer has failed to comply with:
 - (a) a direction given under section 45 or 45A; or

- (b) a notice issued under section 46 or 47;
the Commission may prepare and give to the Minister a report to this effect.
- (2) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the report is given to the Minister.

67 Delegation by Commission

Where the Commission has, under the *Safety, Rehabilitation and Compensation Act 1988*, delegated its powers under this Division, this Division has effect as if any reference in this Division to the Commission or to a member of the Commission were a reference to the person to whom the power has been delegated.

Part 4A—Recovery of cost of administering Act

Division 1—Charges for services

67A Power of Commission to enter into arrangements

- (1) The Commission may enter into an arrangement with the principal officer of an Entity or a Commonwealth authority under which:
 - (a) the Commission will provide to the Entity or authority specified services related to the performance by the Commission of its functions under this Act; and
 - (b) the Entity or authority will pay such amount for the provision of those services as is agreed between them.
- (2) Any amount payable under such an arrangement is a debt due to the Commonwealth and payable to Comcare.

Division 2—Contributions

67B Estimates of contributions

- (1) The Commission must prepare an estimate of the amount of contribution to the cost of the administration of this Act by the Commission that is to be paid by each Entity or Commonwealth authority for each financial year to which this Division applies.
- (2) The estimate in relation to an Entity or authority for the financial year referred to in subsection (4) may include an amount in respect of the cost of the administration of this Act during the period from the commencement of this Act to the commencement of that financial year.
- (3) An estimate is to be in such form as the Commission considers appropriate or, if the Minister has given a direction as to the form in which estimates are to be prepared under this section, in accordance with the direction.
- (4) The period starting on the date of commencement of this Part or 1 July 1992, whichever is the later, and ending on 30 June 1993 is taken to be a financial year to which this Division applies.
- (5) The financial year starting on 1 July 1993 and each subsequent financial year before the financial year starting on 1 July 2002 are financial years to which this Division applies.

67C Amount of contribution

In estimating the amount of the contribution of an Entity or a Commonwealth authority for a financial year, the Commission must have regard to:

- (a) any information given to the Commission under section 96C of the *Safety, Rehabilitation and Compensation Act 1988*; and
- (b) the costs likely to be incurred by the Commission, including costs likely to be incurred by Comcare on behalf of the Commission, in the performance or exercise of the functions and powers of the Commission under this Act (other than

Section 67D

section 67A) in relation to the Entity or authority during the financial year; and

- (c) the premiums (if any) paid or payable by the Entity or authority under Division 4A of Part VII of the *Safety, Rehabilitation and Compensation Act 1988* for the financial year; and
- (d) the past, and estimated future, incidence and cost of injury or disease suffered by, or accidents to, employees of the Entity or authority in their workplace; and
- (e) the money appropriated by the Parliament for the purposes of the performance by the Commission of its functions under this Act.

67D Information to be given to Commission

- (1) The principal officer of an Entity or a Commonwealth authority must, on written request by the Commission, give to the Commission the information specified in the request, being information needed by the Commission to enable it to prepare an estimate under section 67C in relation to the Entity or authority for a financial year.
- (2) The information is to be given not later than a date specified in the request, which must be not earlier than 21 days after the request is made.

67E Review by Commission

- (1) When the Commission prepares an estimate under section 67B, the Commission must give a copy of the estimate to the principal officer of the Entity or the Commonwealth authority to which the estimate relates.
- (2) If the principal officer objects to the estimate, the principal officer may, by written notice of objection given to the Commission within 14 days after receipt of the copy of the estimate, ask the Commission to review the estimate.
- (3) A notice of objection must set out the grounds of the objection.
- (4) As soon as practicable after receiving a notice of objection, the Commission must:
 - (a) review the estimate to which the notice relates; and

- (b) give written notice of the result of the review to the principal officer of the Entity or the Commonwealth authority concerned.
- (5) After reviewing an estimate the Commission must:
 - (a) confirm the estimate; or
 - (b) vary the estimate in such manner as it thinks fit and confirm the estimate as so varied.

67F Review by Minister

- (1) If:
 - (a) an estimate in relation to an Entity or a Commonwealth authority has been reviewed under section 67E; and
 - (b) the principal officer of the Entity or the Commonwealth authority objects to the estimate (or the estimate as varied as a result of the review);the principal officer may, by written notice of objection given to the Minister within 14 days after the date of the notice mentioned in paragraph 67E(4)(b), ask the Minister to review the estimate, or the estimate as so varied, as the case may be.
- (2) A notice of objection must set out the grounds of the objection.
- (3) On receipt of a notice of objection, the Minister must review the estimate, or the estimate as varied under section 67E.
- (4) After completing a review the Minister must:
 - (a) confirm the estimate that is the subject of the review; or
 - (b) vary that estimate in such manner as the Minister thinks fit and confirm it as so varied.

67G Confirmation of estimates

- (1) If the Commission is not required to review an estimate under section 67E, the estimate is taken to have been confirmed, and the confirmation is taken to have taken effect, immediately after the end of the period of 14 days mentioned in subsection 67E(2).
- (2) If the Commission confirms an estimate (or an estimate as varied by it) under subsection 67E(5), the confirmation does not take

Section 67H

effect if the Minister is required under section 67F to review the estimate (or the estimate as so varied).

- (3) If the Minister is not required under section 67F to review an estimate (or an estimate as varied by the Commission), the Commission's confirmation of the estimate (or the estimate as so varied) takes effect immediately after the end of the period of 14 days mentioned in subsection 67F(1).
- (4) The Minister's confirmation of an estimate (or an estimate as varied under section 67E or 67F) takes effect on the date of the confirmation.

67H Payment of contribution

- (1) If the confirmation of an estimate (or an estimate as varied under section 67E or 67F) in relation to an Entity or a Commonwealth authority for a financial year takes effect:
 - (a) the Commission must give written notice to the principal officer of the Entity or the authority accordingly; and
 - (b) the confirmed amount is the contribution of the Entity or authority for that financial year.
- (2) The contribution is payable within such period as is specified in the notice referred to in paragraph (1)(a).

67J Penalty for late payment

- (1) If a contribution is not paid in full within the period referred to in subsection 67H(2), the Entity or Commonwealth authority is liable to pay, in addition to the contribution, a penalty equal to the determined percentage of the sum of the unpaid contribution and any unpaid penalty, calculated at the end of each month or part of a month after the end of that period until the contribution is paid in full.
- (2) The determined percentage is such percentage as the Commission determines with the approval of the Minister but not exceeding:
 - (a) 1.5%; or
 - (b) if another percentage is prescribed—that other percentage.

67K Recovery of contribution and penalty

An amount of contribution, or of penalty under section 67J, is a debt due to the Commonwealth and payable to Comcare.

Part 5—Miscellaneous

68 Notification of accidents and dangerous occurrences

- (1) If an employer is conducting an undertaking, and there arises out of the conduct of the undertaking or out of work performed by an employee in connection with the undertaking:
 - (a) an accident that causes the death of, or serious personal injury to, any person; or
 - (b) an accident that causes an employee who performs work in connection with the undertaking to be incapacitated from performing work for a period prescribed for the purposes of this paragraph; or
 - (c) a dangerous occurrence;the employer must, in accordance with the regulations, give to the Commission such notice of the accident or dangerous occurrence as the regulations require.
- (2) Without limiting the provision that may be made by regulations made for the purposes of this section, the regulations (not being regulations made for the purpose of paragraph (1)(b)) may include provisions relating to:
 - (a) the time within which notice of an accident or dangerous occurrence must be given; and
 - (b) the manner in which the notice must be given; and
 - (c) the form of the notice.

69 Records of accidents and dangerous occurrences to be kept

- (1) An employer must maintain, in accordance with the regulations, a record of each accident or dangerous occurrence in respect of which the employer is required by section 68 to notify the Commission.
- (2) Without limiting the provision that may be made by regulations made for the purposes of this section, such regulations may include provision concerning:
 - (a) the nature of the contents of a record maintained under this section; and

- (b) the period for which such a record must be retained.

70 Codes of practice

- (1) For the purpose of providing practical guidance to employers, the Minister may approve codes of practice prepared by the Commission or by any other body, and may amend or revoke any code of practice so approved.
- (2) Without limiting the generality of the matters that may be included in codes of practice prepared by the Commission, the Commission must, in respect of each advisory standard or code declared after this subsection commences, as soon as practicable after that advisory standard or code is declared, incorporate in a code of practice prepared by the Commission for Ministerial approval under this section so much of that advisory standard or code:
 - (a) as is capable of relating to the employment of employees; and
 - (b) as has not been applied, adopted or incorporated, with or without modification, in regulations made for the purposes of section 23.
- (3) A code of practice incorporating a document (other than an advisory standard or code) that is prepared by a body may incorporate that document as in force at the time the code of practice is approved or as amended by the body from time to time.
- (4) Where the Minister approves or amends a code of practice (including such a code as previously amended by the Minister), the code as so approved or amended may be expressed by the Minister:
 - (a) to apply generally; or
 - (b) to apply only to occupational health and safety matters in an area that is, or among employees who are, specified by the Minister in the instrument of approval.
- (5) Where the Minister approves, amends or revokes a code of practice, the Minister must:
 - (a) cause to be published in the *Gazette* a notice of the approval, amendment or revocation of the code of practice, as the case may be; and
 - (b) cause to be laid before each House of the Parliament, within 15 sitting days of that House after the day on which the

Section 71

notice is published in the *Gazette*, a document setting out the code of practice as approved, including any document incorporated in the code of practice under subsection (3), or the amendment or revocation of the code of practice, as the case may be.

- (6) A document setting out a code of practice or an amendment or revocation of a code of practice is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (7) The Commission must, at all times, ensure that there is available for inspection at each of the offices of Comcare an up to date copy of each document that is incorporated in a code of practice under subsection (3).
- (8) A person is not liable to any civil or criminal proceedings by reason only that the person has failed to observe a provision of a code of practice approved by the Minister.
- (9) In this section:

advisory standard or code means a national standard, or a code of practice, in relation to an occupational health and safety matter that is declared by the Australian Safety and Compensation Council under subsection 6(1) of the *Australian Workplace Safety Standards Act 2005*, other than a standard or code:

- (a) that is to be treated, by operation of subitem 7(2) of Schedule 1 to this Act, as if it had been so declared; and
- (b) that has not been amended or varied since it was first required to be so treated.

71 Use of codes of practice in proceedings

Where in any proceedings under this Act it is alleged that a person breached a provision of this Act or the regulations in relation to which an approved code of practice was in effect at the time of the alleged breach or failure:

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

- (i) any provision of the approved code of practice is relevant to that matter; and
 - (ii) the person failed at any material time to observe that provision of the approved code of practice;
- that matter is to be taken as proved unless the court is satisfied that in respect of that matter the person complied with that provision of this Act or the regulations otherwise than by way of observance of that provision of the approved code of practice.

72 Interference etc. with equipment etc.

- (1) A person must not:
 - (a) interfere with or render ineffective; or
 - (b) require or otherwise cause another person to interfere with or render ineffective;any protective equipment or safety device provided for the health, safety or welfare of employees or contractors at work.

Note: A person who breaches section 72 may be subject to a criminal prosecution (see Schedule 2).

73 Employer not to levy employees etc.

An employer must not levy, or permit to be levied, on any of the employer's employees any charge in respect of anything done or provided, in accordance with this Act or the regulations, in order to ensure the health, safety or welfare of the employees at work.

Note: An employer who breaches section 73 may be subject to civil action (see Schedule 2).

74 Certain matters to be included in annual reports

- (1) The annual report in relation to a financial year:
 - (a) of each Entity through which the Commonwealth acts; and
 - (b) of each Commonwealth authority that is required, under the Act or other law by or in accordance with which the authority is established or incorporated, to prepare an annual report of its activities with a view to that report being laid before each House of the Parliament;must include details of the following matters:

Section 74

- (c) the health and safety management arrangements of the Entity or authority;
 - (d) initiatives taken during the year to ensure the health, safety and welfare at work of employees and contractors of the Entity or authority;
 - (da) health and safety outcomes (including the impact on injury rates of employees and contractors of the Entity or authority) achieved as a result of initiatives mentioned under paragraph (d) or previous initiatives;
 - (e) statistics of any accidents or dangerous occurrences during the year that arose out of the conduct of undertakings by the Entity or authority and that required the giving of notice under section 68;
 - (f) any investigations conducted during the year that relate to undertakings carried on by the employer, including details of all notices given to the employer under section 29, 46 or 47 during the year;
 - (g) such other matters as are required by guidelines approved on behalf of the Parliament by the Joint Committee of Public Accounts and Audit.
- (2) Where an annual report of the activities of the Commonwealth authority is not required, under the Act or other law by or in accordance with which the authority is established or incorporated, to be prepared with a view to its being laid before each House of the Parliament, a report concerning details, in relation to the authority in relation to a particular financial year, of the matters referred to in subsection (1), must be attached:
- (a) if a controlling interest in the Commonwealth authority is held, either directly or indirectly, by another Commonwealth authority in respect of the activities of which an annual report is so required to be prepared—to that annual report; or
 - (b) if a controlling interest in the Commonwealth authority is not so held—to the annual report of the Entity or an Entity, administered by the responsible Minister for the first-mentioned authority.

75 Annual report of Commission

The annual report of the Commission in respect of a financial year must contain a report on the operation of this Act and the regulations during that year, being a report that includes:

- (a) statistics, with appropriate details, of all accidents and dangerous occurrences notified to the Commission during the year under section 68; and
- (c) statistics, with appropriate details, of all:
 - (i) investigations conducted; and
 - (ii) instances of the taking of possession of plant, substances or things, or of the taking of samples of substances or things under section 44; and
 - (iii) directions given under sections 45 and 45A; and
 - (iv) notices issued under sections 46 and 47; and
 - (v) appeals instituted under section 48 against investigators' decisions; and
 - (vi) requests made under subsection 53(4); during the year; and
- (d) particulars of any directions given by the Minister to the Commission under subsection 12(2) during the year; and
- (e) such other matters as are prescribed.

75A Annual report of Comcare

The annual report of Comcare in respect of a financial year must include:

- (a) details of all prosecutions instituted under this Act and the regulations during the year; and
- (b) particulars of any directions given by the Minister to Comcare under subsection 12A(2) during the year; and
- (c) such other matters as are prescribed.

76 Employer not to dismiss etc. employees on certain grounds

- (1) An employer must not:
 - (a) dismiss an employee; or
 - (b) do an act that results in an employee being injured in his or her employment; or

Section 77

- (c) prejudicially alter the employee's position (whether by the deduction or withholding of remuneration or by any other means); or
- (d) threaten to take action, in relation to the employee, that is referred to in paragraph (a), (b) or (c);

because the employee:

- (e) has complained or proposes to complain about a matter concerning the health, safety or welfare of employees at work; or
- (f) has assisted or proposes to assist, by the giving of information or otherwise, the conduct of an investigation; or
- (g) has ceased, or proposes to cease, to perform work, in accordance with a direction by a health and safety representative under paragraph 37(1)(b), not being a cessation or proposed cessation that continues after:
 - (i) the health and safety representative has agreed with a person supervising work the subject of the direction, that the cessation or proposed cessation was not, or is no longer necessary; or
 - (ii) an investigator has, under subsection 37(4), made a decision that has the effect that the employee should perform the work.

Note: An employer who breaches this section may be subject to civil action (see Schedule 2).

77 Institution of proceedings

- (1) Proceedings for a breach of this Act or the regulations may be instituted by Comcare or by an investigator.
- (2) A health and safety representative for a designated work group may request Comcare to institute proceedings for a breach of this Act or the regulations in relation to the occurrence of an act or omission if:
 - (a) a period of 6 months has elapsed since the act or omission occurred; and
 - (b) the health and safety representative considers that the occurrence of the act or omission constitutes a breach of this Act or the regulations; and
 - (c) proceedings in respect of the breach have not been instituted.

- (2A) An employee representative in relation to a designated work group may request Comcare to institute proceedings for a breach of this Act or the regulations in relation to the occurrence of an act or omission if:
- (a) a period of 6 months has elapsed since the act or omission occurred; and
 - (b) the employee representative considers that the occurrence of the act or omission constitutes a breach of this Act or the regulations; and
 - (c) proceedings in respect of the breach have not been instituted; and
 - (d) an employee included in the group requests the employee representative to request Comcare to institute the proceedings.
- (2B) A request under subsection (2) or (2A) must be in writing.
- (3) Comcare must, within 3 months after receiving a request under subsection (2) or (2A), advise the health and safety representative or the employee representative, as the case may be, whether proceedings under subsection (1) have been or will be instituted or give reasons why such proceedings will not be instituted.

78 Conduct of directors, servants and agents

- (1) Where, in proceedings for a breach of this Act or the regulations, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:
- (a) that the conduct was engaged in by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; and
 - (b) that the director, servant or agent had the state of mind.
- (2) Any conduct engaged in on behalf of a body corporate by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority is to be taken, for the purposes of proceedings for a breach of this Act or the regulations, to have been engaged in also by the body corporate unless the body corporate establishes that the body corporate took reasonable precautions and exercised due diligence to avoid the conduct.

Section 79

- (3) Where, in proceedings for a breach of this Act or the regulations, it is necessary to establish the state of mind of a person other than a body corporate in relation to particular conduct, it is sufficient to show:
- (a) that the conduct was engaged in by a servant or agent of the person within the scope of his or her actual or apparent authority; and
 - (b) that the servant or agent had the state of mind.
- (4) Any conduct engaged in on behalf of a person other than a body corporate by a servant or agent of the person within the scope of his or her actual or apparent authority is to be taken, for the purposes of proceedings for a breach of this Act or the regulations, to have been engaged in also by the first-mentioned person unless the first-mentioned person establishes that the first-mentioned person took reasonable precautions and exercised due diligence to avoid the conduct.
- (5) Where:
- (a) a person other than a body corporate is convicted of an offence; and
 - (b) the person would not have been convicted of the offence if subsections (3) and (4) had not been enacted;
- the person is not liable to be punished by imprisonment for that offence.
- (6) A reference in subsection (1) or (3) to the state of mind of a person includes a reference to:
- (a) the knowledge, intention, opinion, belief or purpose of the person; and
 - (b) the person's reasons for the intention, opinion, belief or purpose.

79 Act not to give rise to other liabilities etc.

Subject to section 80, nothing in this Act:

- (a) confers a right of action in any civil proceedings (other than proceedings under Part 1 of Schedule 2) in respect of any breach of a provision of this Act or the regulations; or
- (b) confers a defence to an action in any civil proceedings (other than proceedings under Part 1 of Schedule 2) or otherwise

affects a right of action in any civil proceedings (other than proceedings under Part 1 of Schedule 2).

80 Effect of breach of Act etc. on contracts of employment etc.

- (1) Subject to subsection (3), a breach of this Act or the regulations by an employee is to be taken, for all purposes, including, in the case of a person appointed or engaged under the *Public Service Act 1999* to be a breach of the terms and conditions upon which the person is employed.
- (2) Subject to subsection (3), where a person who occupies an office or position established by an Act, other than the *Public Service Act 1999*, breaches this Act or the regulations, that breach may be taken into account in determining whether that person has been guilty of misbehaviour for the purposes of that first-mentioned Act.
- (3) Subsections (1) and (2) do not apply to a breach of this Act or of the regulations constituted by a refusal or failure to do an act or thing (other than an act or thing that a person is required to take all reasonably practicable steps to do) where, because of an emergency prevailing at the time of the refusal or failure, it was not reasonably practicable to do that act or thing.
- (4) Any term of a contract of employment that purports to exclude, restrict or modify, or has the effect of excluding, restricting or modifying, the application of this section in relation to the contract is void.

81 Circumstances preventing compliance with Act may be defence to prosecution

Where this Act or the regulations require any act or thing to be done by a person, otherwise than in terms that require the person to take all reasonably practicable steps to do that act or thing, it is a defence to a prosecution of that person for refusing or failing to do that thing if the person proves that, because of an emergency prevailing at the time of the refusal or failure, it was not reasonably practicable to do that act or thing.

Section 82

82 Regulations

- (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters:
- (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act;
- and, without limiting the generality of the foregoing, may make regulations prescribing:
- (c) procedures for the election of persons, under section 25A, as health and safety representatives; and
 - (f) the manner in which notices are to be served under this Act or the regulations; and
 - (g) forms for the purposes of this Act or the regulations; and
 - (h) civil or criminal penalties, for a breach of the regulations, not exceeding:
 - (i) 50 penalty units for an individual; or
 - (ii) 250 penalty units for a body corporate.
- (2) Where the Governor-General is satisfied that:
- (a) a power or function is conferred on a person under a law of the Commonwealth or a State or Territory; and
 - (b) this Act, or a provision of this Act, prevents the proper performance of that function, or the proper exercise of that power;
- the Governor-General may make regulations declaring that this Act or that provision does not apply to that person, or does not apply to that person in the circumstances specified in the regulations, and regulations so made have effect accordingly.
- (3) Regulations made under subsection (2) cease to have effect 5 years after the day on which the regulations come into operation unless:
- (a) they are sooner repealed; or
 - (b) they provide that they are to cease to have effect on a day earlier than the first-mentioned day;
- but regulations that are the same in substance as the regulations that have ceased to have effect by virtue of this subsection may be made under subsection (2) at any time after such regulations have so ceased to have effect.
- (4) In subsection (2), *this Act* includes the regulations.
-

Schedule 1—Government business enterprises

Note: See section 5 (definition of *Government business enterprise*).

Australian Industry Development Corporation

Australian Government Solicitor

Australian Postal Corporation

Defence Housing Australia

Schedule 2—Civil and criminal proceedings

Part 1—Civil proceedings

1 Courts that may exercise jurisdiction under this Part

The only courts that may exercise jurisdiction under this Part are the Federal Court of Australia and the Supreme Court of each State or Territory.

2 Declarations of contravention

- (1) If a court considers that a person has breached one of the following provisions, or was involved in such a breach, it must make a declaration that the person has contravened this subclause:
 - (a) subsection 16(1) (duties of employers in relation to their employees etc.);
 - (b) section 17 (duty of employers in relation to third parties);
 - (c) subsection 18(1) or 18(2) (duties of manufacturers in relation to plant and substances);
 - (d) subsection 19(1) (duties of suppliers in relation to plant and substances);
 - (e) subsection 20(1) (duties of person erecting or installing plant in a workplace);
 - (f) subsection 21(1) (duties of employees in relation to occupational health and safety);
 - (fa) section 23A (unlicensed operation of major hazard facilities);
 - (g) subsection 43(2) (requirement to provide assistance and information);
 - (h) subsection 45(5) (requirement to ensure compliance with direction that workplace etc. not be disturbed);
 - (i) subsection 45A(3) (requirement to ensure compliance with oral direction that workplace etc. not be disturbed);
 - (j) subsection 46(4) (requirement to ensure that prohibition notice complied with);
 - (k) subsection 47(6) (requirement to comply with improvement notice);

Clause 3

- (l) section 64 (requirement not to prejudice witnesses in employment);
- (m) section 73 (requirement not to levy employees etc.);
- (n) section 76 (requirement not to dismiss etc. employees on certain grounds);
- (o) a provision of the regulations specified in the regulations to be a civil penalty provision.

Note: Once a declaration has been made, the court can make a pecuniary penalty order (see clause 3).

- (2) In proceedings for a declaration of contravention under subclause (1) in relation to a breach of section 76, if all the relevant facts and circumstances, other than the reason for an action, are proved, it lies on the person who allegedly breached that section to establish that the action was not taken for that reason.
- (3) A declaration of contravention made under subclause (1) must specify the following:
 - (a) the court that made the declaration;
 - (b) that the subclause was contravened;
 - (c) any provision that the person who contravened that subclause breached or was involved in breaching;
 - (d) the person who contravened that subclause;
 - (e) the conduct that constituted the contravention;
 - (f) the Entity, Commonwealth authority or non-Commonwealth licensee to which the conduct related.

3 Declaration of contravention is conclusive evidence

A declaration of contravention is conclusive evidence of the matters referred to in subclause 2(3).

4 Pecuniary penalty orders

- (1) If a court has declared, under subclause 2(1), a contravention of that subclause by a person because the person breached, or was involved in the breach of, a provision listed in that subclause, the court may order the person to pay the Commonwealth a pecuniary penalty.

Schedule 2 Civil and criminal proceedings

Part 1 Civil proceedings

Clause 4

- (2) The pecuniary penalty must not exceed the amount stated in the table to be the maximum penalty in relation to the provision concerned.

Maximum penalty for breach of provisions listed in subclause 2(1)

Item	Provision the person breached, or was involved in the breach of:	Maximum penalty:
1	subsection 16(1) (duties of employers in relation to their employees etc.)	2,200 penalty units
2	section 17 (duty of employers in relation to third parties)	2,200 penalty units
3	subsection 18(1) (duties of manufacturers in relation to plant and substances)	440 penalty units for a natural person 2,200 penalty units for a body corporate
4	subsection 18(2) (duties of manufacturers in relation to plant and substances)	440 penalty units for a natural person 2,200 penalty units for a body corporate
5	subsection 19(1) (duties of suppliers in relation to plant and substances)	440 penalty units for a natural person 2,200 penalty units for a body corporate
6	subsection 20(1) (duties of person erecting or installing plant in a workplace)	440 penalty units for a natural person 2,200 penalty units for a body corporate
7	subsection 21(1) (duties of employees in relation to occupational health and safety)	90 penalty units
7A	section 23A (unlicensed operation of major hazard facility)	2,200 penalty units
8	subsection 43(2) (requirement to provide assistance and information)	30 penalty units
9	subsection 45(5) (requirement to ensure compliance with direction that workplace etc. not be disturbed)	250 penalty units
10	subsection 45A(3) (requirement to ensure compliance with oral direction that workplace etc. not be disturbed)	250 penalty units

Maximum penalty for breach of provisions listed in subclause 2(1)

Item	Provision the person breached, or was involved in the breach of:	Maximum penalty:
11	subsection 46(4) (requirement to ensure that prohibition notice complied with)	250 penalty units
12	subsection 47(6) (requirement to comply with improvement notice)	10 penalty units for each day on which a person breaches subsection 47(6)
13	section 64 (requirement not to prejudice witnesses in employment)	30 penalty units
14	section 73 (requirement not to levy employees etc.)	250 penalty units
15	section 76 (requirement not to dismiss etc. employees on certain grounds)	250 penalty units
16	a provision of the regulations specified in the regulations to be a civil penalty provision	the amount specified for that provision in the regulations

- (3) The penalty is a civil debt payable to the Commonwealth. Comcare may enforce the order as if it were an order made in civil proceedings against the person to recover a debt owed by the person. The debt arising from the order is taken to be a judgment debt.
- (4) In spite of the provisions of any other law, if a penalty is imposed under this clause, a court must not direct that a person serve a sentence of imprisonment in default of the payment of the penalty.

5 Who may apply for a declaration or order?

Application by Comcare or investigator

- (1) Comcare or an investigator may apply for a declaration of contravention or a pecuniary penalty order.

No-one else may apply

- (2) No person may apply for a declaration of contravention or a pecuniary penalty order unless permitted by this clause.

Clause 6

- (3) Subclause (2) does not exclude the operation of the *Director of Public Prosecutions Act 1983*.

6 Time limit for application for a declaration or order

Proceedings for a declaration of contravention or a pecuniary penalty order cannot be started more than 6 years after the alleged breach on which the proceedings are based.

7 Conduct constituting a breach of 2 or more provisions listed in subclause 2(1)

Proceedings may be instituted under this Act against a person in relation to one or more contraventions of subclause 2(1). However, the person is not liable to more than one pecuniary penalty under this clause in respect of the same conduct.

8 Civil evidence and procedure rules for declarations of contravention etc.

The court must apply the rules of evidence and procedure for civil matters in proceedings for:

- (a) a declaration of contravention; or
- (b) a pecuniary penalty order.

9 Civil proceedings after criminal proceedings

A court must not make a declaration of contravention or a pecuniary penalty order against a person for a contravention if the person has been convicted of an offence constituted by conduct that is substantially the same as the conduct constituting the contravention.

10 Criminal proceedings during civil proceedings

- (1) Proceedings for a declaration of contravention or a pecuniary penalty order against a person are stayed if:
- (a) criminal proceedings are started or have already been started against the person for an offence; and
 - (b) the offence is constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention.

- (2) The proceedings for the declaration or order may be resumed if the person is not convicted of the offence. Otherwise, the proceedings for the declaration or order are dismissed.

11 Criminal proceedings after civil proceedings

Criminal proceedings may be started against a person for conduct that is substantially the same as conduct constituting a contravention of subclause 2(1), regardless of whether:

- (a) a declaration of contravention has been made against the person; or
- (b) a pecuniary penalty order has been made against the person.

12 Evidence given in proceedings for penalty not admissible in criminal proceedings

Evidence of information given, or evidence of production of documents, by an individual is not admissible in criminal proceedings against the individual if:

- (a) the individual previously gave the evidence or produced the documents in proceedings for a pecuniary penalty order against the individual for a breach of a provision listed in subclause 2(1) (whether or not the order was made); and
- (b) the conduct alleged to constitute the offence is substantially the same as the conduct that was claimed to constitute the contravention.

However, this does not apply to a criminal proceeding in respect of the falsity of the evidence given by the individual in the proceedings for the pecuniary penalty order.

13 Relief from liability for contravention of subclause 2(1)

- (1) In this clause:

civil penalty proceedings:

- (a) means proceedings for a contravention of subclause 2(1) (other than a contravention arising because of a breach of a provision of the regulations to which strict liability applies); and
- (b) does not include proceedings for an offence.

Clause 14

- (2) If:
- (a) civil penalty proceedings are brought against a person; and
 - (b) in the proceedings, it appears to the court that the person has, or may have, contravened subclause 2(1) but that:
 - (i) the person has acted honestly; and
 - (ii) having regard to all the circumstances of the case, the person ought fairly to be excused for the contravention;
- the court may relieve the person either wholly or partly from a liability to which the person would otherwise be subject, or that might otherwise be imposed on the person, because of the contravention.
- (3) If a person considers that civil penalty proceedings will or may be begun against them, they may apply to the court for relief.
- (4) On an application under subclause (3), the court may grant relief under subclause (2) as if the civil penalty proceedings had been begun in the court.
- (5) For the purposes of applying subclause (2) to a case tried by a judge with a jury:
- (a) a reference in that subclause to the court is a reference to the judge; and
 - (b) the relief that may be granted includes withdrawing the case in whole or in part from the jury and directing judgment to be entered for the defendant on such terms as to costs as the judge considers appropriate.

14 Injunctions

Applications for injunctions

- (1) Comcare or an investigator (the **applicant**) may apply to a court for an injunction if another person (the **relevant person**) has breached, is breaching, or proposes to breach this Act or the regulations.

Prohibitory injunctions

- (2) The court may grant an injunction restraining the relevant person from breaching this Act or the regulations:

- (a) whether or not it appears to the court that the relevant person intends to breach the Act or the regulations again, or to continue to breach the Act or the regulations; and
 - (b) whether or not the body has previously breached the Act or regulations;
- if the body has breached, is breaching, or proposes to breach this Act or the regulations.

Additional orders with prohibitory injunctions

- (3) The court may make an order requiring the relevant person to do something if:
 - (a) the court grants an injunction restraining the relevant person from engaging in actionable conduct; and
 - (b) in the court's opinion it is desirable to make the order.

Mandatory injunctions

- (4) The court may grant an injunction requiring the relevant person to do an act:
 - (a) whether or not it appears to the court that the relevant person intends to refuse or fail again, or to continue to refuse or fail, to do the act or thing; and
 - (b) whether or not the relevant person has previously refused or failed to do the act or thing;

if the relevant person has refused or failed, or is refusing or failing, or is proposing to refuse or fail to do an act, and the refusal or failure did, does or would constitute a breach of the Act or the regulations.

Interim injunctions

- (5) The court may grant an interim injunction:
 - (a) restraining the relevant person from engaging in conduct; or
 - (b) requiring the relevant person to do an act;

before deciding an application for an injunction under this section.

Discharge of injunctions

- (6) The court may discharge, or vary, an injunction if an application for it to do so is made.

Clause 15

No undertakings as to damages

- (7) The court must not require the applicant to give an undertaking as to damages as a condition of granting an interim injunction.

Powers conferred in addition to other powers of the court

- (8) The powers conferred on the court by this section are in addition to (and do not limit) any other powers of the court.

15 Remedial orders

- (1) If:

- (a) a court makes a declaration under clause 2 of this Schedule or convicts a person of an offence against this Act or the regulations; and
- (b) it appears to the court that the person could fully or partly remedy a state of affairs that arose as a direct or indirect result of the conduct that was the subject of the declaration or offence; and
- (c) the court has been requested to make an order under this subsection; and
- (d) the court has considered any relevant material given to it by Comcare;

then the court may order the person to take any steps that it considers are necessary and appropriate to rectify the state of affairs and that are within the person's power to take.

- (2) If:

- (a) an employer has breached section 64 or 76 in respect of an employee; and
- (b) a court has made a declaration under clause 2 of this Schedule relating to that breach; and
- (c) the court has been requested to make an order under this subsection; and
- (d) the court has considered any relevant material given to it by Comcare;

then, if the court considers it appropriate, the court may make any of the following orders:

- (e) an order requiring the employer to reinstate the employee or former employee;

- (f) an order requiring the employer to pay the employee or former employee compensation of such amount as the court considers appropriate;
- (g) an order requiring the employer not to carry out a threat made by the employer, or not to make any further threat;
- (h) injunctions (including interim injunctions), and any other orders, that the court considers necessary to stop the conduct or remedy its effects.

Consequential orders

- (3) If a court makes an order under this section, it may also make any other consequential orders (including orders as to costs) that it considers appropriate.

16 Undertakings

- (1) Comcare may accept a written undertaking relating to the fulfilment of an obligation under this Act, if the undertaking is given in writing to Comcare by a person who is required to fulfil the obligation.
- (2) The person must not withdraw or vary the undertaking without the written consent of Comcare.
- (3) If proceedings relating to whether a declaration should be made against a person under clause 2 have commenced, the court may adjourn the proceedings if Comcare requests the court to do so on the grounds that Comcare considers that an appropriate written undertaking by the person under subclause (1) is in force.
- (4) If the court considers that a person has breached a term of an undertaking, or that the person has withdrawn or varied the undertaking without the written consent of Comcare, the court may, if it thinks fit:
 - (a) revive any proceedings adjourned under subclause (3); or
 - (b) make an order directing the person to comply with the term (regardless of whether the person has withdrawn or varied the undertaking) and any consequential orders it considers appropriate.

Schedule 2 Civil and criminal proceedings

Part 1 Civil proceedings

Clause 16

- (5) Comcare or an investigator may apply to a court for an order under paragraph (4)(b) if the person has breached, is breaching, or proposes to breach the undertaking.

Part 2—Criminal prosecutions

17 Criminal jurisdiction not conferred on Federal Court

This Part does not confer any criminal jurisdiction on the Federal Court of Australia.

18 Offences resulting in death or serious bodily harm

- (1) A person commits an offence if:
- (a) the person breaches one of the following provisions:
 - (i) subsection 16(1) (duties of employers in relation to their employees etc.);
 - (ii) section 17 (duty of employers in relation to third parties);
 - (iii) subsection 18(1) or 18(2) (duties of manufacturers in relation to plant and substances);
 - (iv) subsection 19(1) (duties of suppliers in relation to plant and substances);
 - (v) subsection 20(1) (duties of person erecting or installing plant in a workplace);
 - (vi) subsection 21(1) (duties of employees in relation to occupational health and safety);
 - (vii) subsection 43(2) (requirement to provide assistance and information);
 - (viii) subsection 45(5) (requirement to ensure compliance with direction that workplace etc. not be disturbed);
 - (ix) subsection 45A(3) (requirement to ensure compliance with oral direction that workplace etc. not be disturbed);
 - (x) subsection 46(4) (requirement to ensure that prohibition notice complied with);
 - (xi) subsection 47(6) (requirement to comply with improvement notice);
 - (xii) section 50 (requirement not to tamper with notices);
 - (xiii) section 72 (interference etc. with equipment etc.); and
 - (b) the breach causes death or serious bodily harm; and

Clause 19

(c) the person either:

- (i) was negligent as to whether that breach would cause death or serious bodily harm; or
- (ii) was reckless as to whether that breach would cause death or serious bodily harm.

Note 1: If a person commits an offence under this subclause, the maximum penalty in relation to the offence is set out in clause 21.

Note 2: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(2) Paragraphs (1)(a)(vii), (xii) and (xiii) do not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subclause (2) (see subsection 13.3(3) of the *Criminal Code*).

19 Offences exposing employees to a substantial risk of death or serious bodily harm

An employer commits an offence if:

- (a) the employer breaches subsection 16(1) (duties of employers in relation to their employees etc.); and
- (b) the breach exposes an employee to a substantial risk of death or serious bodily harm; and
- (c) the employer:
 - (i) was negligent as to whether that breach would expose an employee to a substantial risk of death or serious bodily harm; or
 - (ii) was reckless as to whether that breach would expose an employee to a substantial risk of death or serious bodily harm.

Note 1: If a person commits an offence under this subclause, the maximum penalty in relation to the offence is set out in clause 21.

Note 2: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

20 Other offences

- (1) A person commits an offence if the person intentionally breaches one of the following provisions:
 - (a) subsection 54(1) (requirement to give information or produce documents);
-

- (b) section 57 (failure of witness to attend);
- (c) section 59 (refusal to be sworn or to answer questions);
- (d) section 61 (contempt of Commission).

Note 1: If a person commits an offence under this subclause, the maximum penalty in relation to the offence is set out in clause 21.

Note 2: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (2) Paragraphs (1)(a) to (c) do not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subclause (2) (see subsection 13.3(3) of the *Criminal Code*).

21 Maximum penalties

- (1) An offence against clause 18, 19 or 20 relating to the breach of a provision is punishable on conviction by a penalty not exceeding the maximum penalty stated in the table in relation to the provision breached.

Maximum penalty for offences resulting from breach of provisions listed in clause 18, 19 or 20

Item	Provision that was breached:	Maximum penalty:
1	subsection 16(1) (duties of employers in relation to their employees etc.)	where the offence is an offence against clause 18—4,500 penalty units
2	subsection 16(1) (duties of employers in relation to their employees etc.)	where the offence is an offence against clause 19—3,000 penalty units
3	section 17 (duty of employers in relation to third parties)	4,500 penalty units
4	subsection 18(1) (duties of manufacturers in relation to plant and substances)	900 penalty units for a natural person 4,500 penalty units for a body corporate
5	subsection 18(2) (duties of manufacturers in relation to plant and substances)	900 penalty units for a natural person 4,500 penalty units for a body corporate

Schedule 2 Civil and criminal proceedings
Part 2 Criminal prosecutions

Clause 21

Maximum penalty for offences resulting from breach of provisions listed in clause 18, 19 or 20

Item	Provision that was breached:	Maximum penalty:
6	subsection 19(1) (duties of suppliers in relation to plant and substances)	900 penalty units for a natural person 4,500 penalty units for a body corporate
7	subsection 20(1) (duties of person erecting or installing plant in a workplace)	900 penalty units for a natural person 4,500 penalty units for a body corporate
8	subsection 21(1) (duties of employees in relation to occupational health and safety)	180 penalty units
9	subsection 43(2) (requirement to provide assistance and information)	30 penalty units, 6 months imprisonment, or both
10	subsection 45(5) (requirement to ensure compliance with direction that workplace etc. not be disturbed)	500 penalty units
11	Subsection 45A(3) (requirement to ensure compliance with oral direction that workplace etc. not be disturbed)	500 penalty units
12	subsection 46(4) (requirement to ensure that prohibition notice complied with)	500 penalty units
13	subsection 47(6) (requirement to comply with improvement notice)	900 penalty units (and see subclause (2))
14	section 50 (requirement not to tamper with notices)	30 penalty units, 6 months imprisonment, or both
15	subsection 54(1) (requirement to give information or produce documents)	30 penalty units, 6 months imprisonment, or both
16	section 57 (failure of witness to attend)	30 penalty units, 6 months imprisonment, or both

Maximum penalty for offences resulting from breach of provisions listed in clause 18, 19 or 20

Item	Provision that was breached:	Maximum penalty:
17	section 59 (refusal to be sworn or to answer questions)	30 penalty units, 6 months imprisonment, or both
18	section 61 (contempt of Commission)	30 penalty units, 6 months imprisonment, or both
19	section 72 (interference etc. with equipment etc.)	30 penalty units, 6 months imprisonment, or both

- (2) Section 4K of the *Crimes Act 1914* does not apply to a contravention of clause 18 in respect of a breach of subsection 47(6).
- (3) In spite of the provisions of any other law, if a fine is imposed under this clause, a court must not direct that a person serve a sentence of imprisonment in default of the payment of the fine.

Table of Acts**Notes to the *Occupational Health and Safety Act 1991*****Note 1**

The *Occupational Health and Safety Act 1991* as shown in this compilation comprises Act No. 30, 1991 amended as indicated in the Tables below.

The *Occupational Health and Safety Act 1991* was modified by the *Occupational Health and Safety (Safety Arrangements) Regulations 1991* (1991 No. 266 as amended). The modifications are not incorporated in this compilation.

The *Occupational Health and Safety Act 1991* was amended by the *Occupational Health and Safety (Commonwealth Employment) Act 1991 Amendment Regulations 2001 (No. 1)* (2001 No. 69). The amendments are incorporated in this compilation.

All relevant information pertaining to application, saving or transitional provisions prior to 7 March 2000 is not included in this compilation. For subsequent information *see* Table A.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Occupational Health and Safety (Commonwealth Employment) Act 1991</i>	30, 1991	6 Mar 1991	Ss. 3–82: 6 Sept 1991 Remainder: Royal Assent	
<i>Industrial Relations Legislation Amendment Act (No. 3) 1991</i>	7, 1992	15 Jan 1992	Part 2 (ss. 3–27): 22 June 1992 (<i>see Gazette</i> 1992, No. S159) Part 5 (ss. 38, 39): 8 Apr 1992 (<i>see Gazette</i> 1992, No. S92) Remainder: Royal Assent	Ss. 26 and 27
as amended by <i>Commonwealth Employment (Miscellaneous Amendments) Act 1992</i>	95, 1992	30 June 1992	(<i>see</i> 95, 1992 below)	—

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Commonwealth Employment (Miscellaneous Amendments) Act 1992</i>	95, 1992	30 June 1992	Ss. 3–33 and 44–50: 30 June 1992 (<i>see Gazette</i> 1992, No. S175) Ss. 34–37 and 41–43: 22 June 1992 (<i>see s. 2(4)</i>) Ss. 38–40: 27 June 1991 Remainder: Royal Assent	—
<i>Qantas Sale Act 1992</i>	196, 1992	21 Dec 1992	Schedule (Parts 3, 6): (a)	S. 2(6) (am. by 60, 1993, s. 4; 168, 1994, Sch. (tem 17))
as amended by				
<i>Qantas Sale Amendment Act 1993</i>	60, 1993	3 Nov 1993	10 Mar 1993	—
<i>Qantas Sale Amendment Act 1994</i>	168, 1994	16 Dec 1994	Schedule (item 17): Royal Assent (b)	—
<i>Snowy Mountains Engineering Corporation Limited Sale Act 1993</i>	54, 1993	27 Oct 1993	Ss. 1–4 and 38: Royal Assent S. 37: 9 Nov 1993 (<i>see Gazette</i> 1993, No. S371) Remainder: 9 Nov 1993 (<i>see Gazette</i> 1993, No. S334)	S. 41
as amended by				
<i>Statute Law Revision Act 1996</i>	43, 1996	25 Oct 1996	Schedule 3 (item 47): 27 Oct 1993 (c)	—
<i>CSL Sale Act 1993</i>	88, 1993	30 Nov 1993	Part 1 (ss. 1–4), ss. 7 and 47: Royal Assent Ss. 5 and 6: 22 Feb 1991 Remainder: 3 June 1994 (<i>see Gazette</i> 1994, No. S209)	S. 50
<i>Industrial Relations and other Legislation Amendment Act 1993</i>	109, 1993	22 Dec 1993	Ss. 1, 2 and 58: Royal Assent S. 32: 5 Jan 1994 S. 34: 6 Sept 1991 S. 47: 24 Dec 1992 Remainder: 19 Jan 1994	—

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Transport and Communications Legislation Amendment Act 1994</i>	64, 1994	30 May 1994	S. 3(3): Royal Assent (<i>d</i>)	—
<i>A.C.T. Self-Government (Consequential Provisions) Act 1988</i>	109, 1988	6 Dec 1988	S. 32: (see 92, 1994 below)	—
as amended by <i>Australian Capital Territory Government Service (Consequential Provisions) Act 1994</i>	92, 1994	29 June 1994	1 July 1994 (see <i>Gazette</i> 1994, No. S256)	—
<i>ANL Sale Act 1995</i>	136, 1995	5 Dec 1995	(<i>e</i>)	—
<i>Commonwealth Bank Sale Act 1995</i>	161, 1995	16 Dec 1995	Schedule (item 55): (<i>f</i>)	—
<i>Workplace Relations and Other Legislation Amendment Act 1996</i>	60, 1996	25 Nov 1996	Schedule 19 (item 35): Royal Assent (<i>g</i>)	S. 2(2) and (6) (am. by 77, 1996, Sch. 3 (items 1, 2))
as amended by <i>Workplace Relations and Other Legislation Amendment Act (No. 2) 1996</i>	77, 1996	19 Dec 1996	Schedule 3 (items 1, 2): (<i>h</i>)	—
<i>AIDC Sale Act 1997</i>	67, 1997	5 June 1997	Schedule 2 (item 10): [<i>see (i) and Note 2</i>]	—
<i>Australian National Railways Commission Sale Act 1997</i>	96, 1997	30 June 1997	Schedule 4 (item 16): 1 Nov 2000 (see <i>Gazette</i> 2000, No. S562) (<i>j</i>)	—
<i>Audit (Transitional and Miscellaneous) Amendment Act 1997</i>	152, 1997	24 Oct 1997	Schedule 2 (item 1070): 1 Jan 1998 (see <i>Gazette</i> 1997, No. GN49) (<i>k</i>)	—
<i>Snowy Hydro Corporatisation (Consequential Amendments) Act 1997</i>	177, 1997	21 Nov 1997	28 June 2002 (see s. 2 and <i>Gazette</i> 2002, No. S216)	—
<i>Public Employment (Consequential and Transitional) Amendment Act 1999</i>	146, 1999	11 Nov 1999	Schedule 1 (items 696–701): 5 Dec 1999 (see <i>Gazette</i> 1999, No. S584) (<i>l</i>)	—

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Australian Security Intelligence Organisation Legislation Amendment Act 1999</i>	161, 1999	10 Dec 1999	Schedule 3 (items 1, 47, 48): (m)	—
<i>Australian Federal Police Legislation Amendment Act 2000</i>	9, 2000	7 Mar 2000	2 July 2000 (see <i>Gazette</i> 2000, No. S328)	Sch. 3 (items 20, 28, 34, 35) [see Table A]
<i>Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000</i>	137, 2000	24 Nov 2000	Ss. 1–3 and Schedule 1 (items 1, 4, 6, 7, 9–11, 32): Royal Assent Remainder: 24 May 2001	Sch. 2 (items 418, 419) [see Table A]
<i>Employment, Workplace Relations and Small Business Legislation Amendment (Application of Criminal Code) Act 2001</i>	142, 2001	1 Oct 2001	S. 4 and Schedule 1 (items 71–88): 2 Oct 2001 (n)	S. 4 [see Table A]
<i>Safety, Rehabilitation and Compensation and Other Legislation Amendment Act 2001</i>	144, 2001	1 Oct 2001	Schedule 3 (item 12): Royal Assent (o)	—
<i>Workplace Relations Legislation Amendment (Registration and Accountability of Organisations) (Consequential Provisions) Act 2002</i>	105, 2002	14 Nov 2002	Schedule 3 (item 59): 12 May 2003 (see s. 2 and <i>Gazette</i> 2002, No. GN49)	—
<i>Occupational Health and Safety (Commonwealth Employment) Amendment (Employee Involvement and Compliance) Act 2004</i>	122, 2004	16 Aug 2004	Schedule 1: 13 Sept 2004 Remainder: Royal Assent	Sch. 1 (items 170, 171, 174) [see Table A]
<i>Human Services Legislation Amendment Act 2005</i>	111, 2005	6 Sept 2005	Schedule 2 (item 606): 1 Oct 2005	—
<i>National Occupational Health and Safety Commission (Repeal, Consequential and Transitional Provisions) Act 2005</i>	135, 2005	15 Nov 2005	Schedules 1 and 2: 1 Jan 2006 (see s. 2(1)) Remainder: Royal Assent	Sch. 2 (item 7) [see Table A]
<i>Defence Housing Authority Amendment Act 2006</i>	45, 2006	22 May 2006	Schedule 2 (item 2): (p)	—

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>OHS and SRC Legislation Amendment Act 2006</i>	98, 2006	14 Sept 2006	Schedule 1 (items 1–3, 3A, 4–40): 14 Mar 2007 Schedule 2 (items 4–6): Royal Assent	Sch. 1 (item 40) and Sch. 2 (items 4–6) [see Table A]
<i>Occupational Health and Safety (Commonwealth Employment) Amendment Act 2006</i>	111, 2006	23 Oct 2006	Schedule 1: 15 Mar 2007 (see F2007L00525) Schedule 2: 20 Nov 2006 Remainder: Royal Assent	Sch. 1 (items 56–66) [see Table A]
<i>Statute Law Revision Act 2007</i>	8, 2007	15 Mar 2007	Schedule 1 (item 19): (q)	—
<i>Safety, Rehabilitation and Compensation and Other Legislation Amendment Act 2007</i>	54, 2007	12 Apr 2007	Schedule 3: 13 Apr 2007	—

Act Notes

- (a) The *Occupational Health and Safety Act 1991* was amended by the Schedule (Parts 3 and 6) only of the *Qantas Sale Act 1992*, subsections 2(2), (3)(b), (c), (5) and (6) of which provide as follows:
- (2) Subject to subsection (3), the remaining provisions of this Act commence on a day or days to be fixed by Proclamation.
 - (3) A Proclamation may fix a day that is earlier than the day on which the Proclamation is published in the *Gazette* but only if:
 - (b) in the case of sections 22, 23, 26, 27, 29, 32, 33, 34, 42, 45, 46, 47, 48 and 49 and Parts 3 and 4 of the Schedule—the day is not earlier than the 50% sale day; and
 - (c) in the case of sections 25, 36, 38, 44 and 51 and Parts 5, 6 and 7 of the Schedule—the day is not earlier than the 100% sale day.
 - (5) If, on the 100% sale day, Part 3 of the Schedule has not commenced, then, on the day on which Part 7 of the Schedule commences, Parts 3 and 6 of the Schedule are taken to have been repealed.
 - (6) If a provision of this Act has not commenced before 31 August 1995, the provision is taken to have been repealed on that day.
- The Schedule (Parts 3 and 6) are taken to have been repealed on 31 August 1995.
- (b) The *Qantas Sale Act 1992* was amended by the Schedule (item 17) only of the *Qantas Sale Amendment Act 1994*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (c) The *Snowy Mountains Engineering Corporation Limited Sale Act 1993* was amended by Schedule 3 (item 47) only of the *Statute Law Revision Act 1996*, subsection 2(3) of which provides as follows:
- (3) Each item in Schedule 3 is taken to have commenced when the Act containing the provision amended by the item received the Royal Assent.
- (d) The *Occupational Health and Safety Act 1991* was amended by subsection 3(3) only of the *Transport and Communications Legislation Amendment Act 1994*, subsection 2(1) of which provides as follows:
- (1) Subject to subsections (2) and (3), this Act commences on the day on which it receives the Royal Assent.
- (e) The *ANL Sale Act 1995* was repealed by section 79 of that Act before coming into operation.
- (f) The *Occupational Health and Safety Act 1991* was amended by the Schedule (item 55) of the *Commonwealth Bank Sale Act 1995*, subsection 2(2) of which provides as follows:
- (2) Part 3, and all the items of the Schedule (except items 1, 12, 16, 17, 21, 22, 23, 26, 27, 31, 37 and 48), commence at the transfer time.
- The transfer time occurred on 19 July 1996.
- (g) The *Occupational Health and Safety Act 1991* was amended by Schedule 19 (item 35) only of the *Workplace Relations and Other Legislation Amendment Act 1996*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (h) The *Workplace Relations and Other Legislation Amendment Act 1996* was amended by Schedule 3 (items 1 and 2) of the *Workplace Relations and Other Legislation Amendment Act (No. 2) 1996*, subsection 2(4) of which provides as follows:
- (4) The items of Schedule 3 are taken to have commenced immediately after the *Workplace Relations and Other Legislation Amendment Act 1996* received the Royal Assent.

Act Notes

-
- (i) The *Occupational Health and Safety Act 1991* was amended by Schedule 2 (item 10) only of the *AIDC Sale Act 1997*, subsection 2(2) of which provides as follows:
- (2) Schedule 2 commences on a day to be fixed by Proclamation. The day must not be earlier than the day on which the Minister gives the Governor-General a written certificate stating that the Minister is satisfied that the Australian Industry Development Corporation has no assets and no liabilities. [see Note 2]
- (j) The *Occupational Health and Safety Act 1991* was amended by Schedule 4 (item 16) only of the *Australian National Railways Commission Sale Act 1997*, subsection 2(5) of which provides as follows:
- (5) The remaining items of Schedule 3 and Schedule 4 commence on a day to be fixed by Proclamation. The day must not be earlier than the later of the day proclaimed for the purposes of subsection (2) and the day proclaimed for the purposes of subsection (3).
- (k) The *Occupational Health and Safety Act 1991* was amended by Schedule 2 (item 1070) only of the *Audit (Transitional and Miscellaneous) Amendment Act 1997*, subsection 2(2) of which provides as follows:
- (2) Schedules 1, 2 and 4 commence on the same day as the *Financial Management and Accountability Act 1997*.
- (l) The *Occupational Health and Safety Act 1991* was amended by Schedule 1 (items 696–701) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsections 2(1) and (2) of which provide as follows:
- (1) In this Act, **commencing time** means the time when the *Public Service Act 1999* commences.
- (2) Subject to this section, this Act commences at the commencing time.
- (m) The *Occupational Health and Safety Act 1991* was amended by Schedule 3 (items 1, 47 and 48) only of the *Australian Security Intelligence Organisation Legislation Amendment Act 1999*, subsection 2(2) of which provides as follows:
- Schedule 3*
- (2) Subject to subsections (3) to (6), Schedule 3 commences immediately after the commencement of the other Schedules to this Act.
- The other Schedules to this Act commenced on 10 December 1999.
- (n) The *Occupational Health and Safety Act 1991* was amended by Schedule 1 (items 71–88) only of the *Employment, Workplace Relations and Small Business Legislation Amendment (Application of Criminal Code) Act 2001*, subsections 2(1) and (2)(a) of which provide as follows:
- (1) Subject to this section, this Act commences on the day after the day on which it receives the Royal Assent.
- (2) The commencement of the items of Schedule 1 to this Act that amend the *Occupational Health and Safety (Commonwealth Employment) Act 1991* is as follows:
- (a) if section 1 of the *Occupational Health and Safety (Commonwealth Employment) Amendment Act 2001* does not commence on or before the commencement of section 1 of this Act, the items commence in accordance with subsection (1) of this section;
- (o) The *Occupational Health and Safety Act 1991* was amended by Schedule 3 (item 12) only of the *Safety, Rehabilitation and Compensation and Other Legislation Amendment Act 2001*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
-

Act Notes

(p) Subsection 2(1) (item 4) of the *Defence Housing Authority Amendment Act 2006* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
4. Schedule 2, item 2	The later of: (a) the time the provision(s) covered by table item 2 commence; and (b) immediately after the commencement of Schedule 1 to the <i>Occupational Health and Safety (Commonwealth Employment) Amendment Act 2006</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	15 March 2007 (paragraph (b) applies)

(q) Subsection 2(1) (item 16) of the *Statute Law Revision Act 2007* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Provision(s)	Commencement	Date/Details
16. Schedule 1, item 19	Immediately after the commencement of item 5 of Schedule 1 to the <i>Occupational Health and Safety (Commonwealth Employment) Amendment Act 2006</i> . However, if item 5 of Schedule 1 to the <i>Occupational Health and Safety (Commonwealth Employment) Amendment Act 2006</i> does not commence, the provision(s) do not commence at all.	15 March 2007

Table of Amendments**Table of Amendments**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Title	am. No. 98, 2006
Part 1	
S. 1	am. No. 98, 2006
S. 3	am. No. 122, 2004; No. 98, 2006
S. 4	rs. No. 98, 2006
S. 5	am. Nos. 7 and 95, 1992; No. 109, 1993; No. 109, 1988 (as am. by No. 92, 1994); No. 60, 1996; No. 152, 1997; No. 146, 1999; Statutory Rules 2001 No. 69; No. 142, 2001; No. 105, 2002; No. 122, 2004; Nos. 98 and 111, 2006; No. 8, 2007
S. 6	am. No. 161, 1999
S. 8	am. No. 9, 2000
Heading to s. 9	rs. No. 98, 2006
Subheads. to s. 9(4), (5)	ad. No. 98, 2006
S. 9	am. No. 109, 1988 (as am. by No. 92, 1994); No. 9, 2000; No. 98, 2006
S. 9A	ad. No. 98, 2006
S. 10	am. No. 98, 2006
S. 11	am. No. 122, 2004; No. 98, 2006
S. 12	am. No. 7, 1992; No. 122, 2004; Nos. 98 and 111, 2006
S. 12A	ad. No. 7, 1992
S. 14	am. No. 98, 2006
Note to s. 14(1)	ad. No. 122, 2004 am. No. 98, 2006
S. 15	am. No. 98, 2006
S. 15A	ad. No. 142, 2001
Part 2	
Division 1	
S. 16	am. No. 122, 2004; No. 111, 2006
Note to s. 16(1)	ad. No. 122, 2004
Ss. 16A, 16B	ad. No. 111, 2006
S. 17	am. No. 122, 2004
Note to s. 17	ad. No. 122, 2004
S. 18	am. No. 122, 2004
Note to s. 18(1), (2)	ad. No. 122, 2004
S. 19	am. No. 122, 2004
Note to s. 19(1)	ad. No. 122, 2004
S. 20	am. No. 122, 2004; No. 111, 2006
Note to s. 20(1)	ad. No. 122, 2004 rs. No. 111, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 21	am. No. 122, 2004; No. 111, 2006
Note to s. 21(1)	ad. No. 122, 2004
Division 2	
S. 23	am. No. 109, 1993
S. 23A	ad. No. 54, 2007
Part 3	
Division 1	
S. 24	am. No. 111, 2006
Ss. 24A, 24B	ad. No. 111, 2006
Heading to s. 25	rs. No. 111, 2006
S. 25	am. No. 111, 2006
Ss. 25A–25C	ad. No. 111, 2006
S. 26	rs. No. 111, 2006
S. 26A	ad. No. 111, 2006
S. 28	am. No. 122, 2004
S. 29	am. No. 122, 2004; No. 111, 2006
Ss. 31–33	am. No. 111, 2006
Division 2	
S. 34	rs. No. 111, 2006
Division 3	
S. 37	am. No. 111, 2006
Part 4	
Division 1	
S. 38A	ad. No. 111, 2006
S. 39	am. No. 7, 1992 rs. No. 111, 2006
Division 2	
S. 40	am. No. 7, 1992 (as am. by No. 95, 1992)
S. 41	am. No. 7, 1992; Statutory Rules 2001 No. 69; No. 122, 2004; Nos. 98 and 111, 2006
S. 43	am. No. 137, 2000; Statutory Rules 2001 No. 69; No. 142, 2001; No. 122, 2004; Nos. 98 and 111, 2006
Heading to s. 45	am. No. 122, 2004
S. 45	am. No. 122, 2004
Note to s. 45(5)	ad. No. 122, 2004
S. 45A	ad. No. 122, 2004
S. 46	am. No. 122, 2004
Note to s. 46(4)	ad. No. 122, 2004
S. 47	am. No. 122, 2004; No. 111, 2006
Note to s. 47(6)	ad. No. 122, 2004
S. 48	am. No. 122, 2004; No. 111, 2006
S. 50	am. No. 142, 2001; No. 122, 2004 rs. No. 111, 2006

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Note to s. 50(1)	ad. No. 122, 2004 rep. No. 111, 2006
S. 51	am. No. 146, 1999
Division 3	
S. 52	am. No. 122, 2004; No. 98, 2006
S. 53	am. No. 98, 2006
S. 54	am. No. 142, 2001; No. 122, 2004
S. 57	am. No. 142, 2001; No. 122, 2004
Note to s. 57(1)	ad. No. 122, 2004
Heading to s. 59	am. No. 122, 2004
S. 59	am. No. 142, 2001; No. 122, 2004
Note to s. 59(1)	ad. No. 122, 2004
S. 61	am. No. 122, 2004
Note to s. 61	ad. No. 122, 2004
S. 64	am. No. 142, 2001; No. 122, 2004
Note to s. 64	ad. No. 122, 2004
Ss. 66, 67	am. No. 122, 2004
Part 4A	
Part 4A	ad. No. 95, 1992
Division 1	
S. 67A	ad. No. 95, 1992 am. Statutory Rules 2001 No. 69
Division 2	
S. 67B	ad. No. 95, 1992 am. Statutory Rules 2001 No. 69; No. 144, 2001
S. 67C	ad. No. 95, 1992 am. Statutory Rules 2001 No. 69; No. 111, 2006
S. 67D	ad. No. 95, 1992 am. Statutory Rules 2001 No. 69
S. 67E	ad. No. 95, 1992 am. Statutory Rules 2001 No. 69
S. 67F	ad. No. 95, 1992 am. Statutory Rules 2001 No. 69
S. 67G	ad. No. 95, 1992
S. 67H	ad. No. 95, 1992 am. Statutory Rules 2001 No. 69
S. 67J	ad. No. 95, 1992 am. Statutory Rules 2001 No. 69
S. 67K	ad. No. 95, 1992
Part 5	
Heading to s. 68	am. No. 111, 2006
S. 68	am. No. 109, 1993; No. 111, 2006
S. 70	am. No. 109, 1993; No. 135, 2005; Nos. 98 and 111, 2006
S. 71	am. No. 122, 2004

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 72.....	am. No. 142, 2001; No. 122, 2004
Note to s. 72.....	ad. No. 122, 2004
S. 73.....	am. No. 122, 2004
Note to s. 73.....	ad. No. 122, 2004
S. 74.....	am. No. 109, 1993; Statutory Rules 2001 No. 69; No. 111, 2006
S. 75.....	am. No. 7, 1992; No. 122, 2004
S. 75A.....	ad. No. 7, 1992
S. 76.....	am. No. 142, 2001; No. 122, 2004
Note to s. 76(1).....	ad. No. 122, 2004
Heading to s. 77.....	am. No. 122, 2004
S. 77.....	am. No. 7, 1992 (as am. by No. 95, 1992); No. 122, 2004; No. 111, 2006
Ss. 78, 79.....	am. No. 122, 2004
Heading to s. 80.....	am. No. 122, 2004
S. 80.....	am. No. 146, 1999; No. 122, 2004
S. 82.....	am. No. 122, 2004; No. 111, 2006
Schedules	
Schedule 1	
Heading to Schedule.....	rep. No. 122, 2004
Heading to Schedule 1.....	ad. No. 122, 2004 rs. No. 111, 2006
Schedule.....	am. No. 54, 1993 (as am. by No. 43, 1996); No. 88, 1993; No. 64, 1994; No. 161, 1995; Nos. 96 and 177, 1997
Schedule 1.....	am. No. 111, 2005 rs. No. 111, 2006 am. No. 45, 2006
Schedule 2	
Heading to Schedule 2.....	rs. No. 54, 2007
Schedule 2.....	ad. No. 122, 2004 am. No. 98, 2006; No. 54, 2007

Note 2

Note 2

AIDC Sale Act 1997 (No. 67, 1997)

The following amendment commences on proclamation:

Schedule 2

10 Schedule

Omit “Australian Industry Development Corporation”.

As at 18 April 2007 the amendment is not incorporated in this compilation.

Table A

Table A

Application, saving or transitional provisions

Australian Federal Police Legislation Amendment Act 2000 (No. 9, 2000)

Schedule 3

20 Definition

In this Part:

commencing time means the time when this Part commences.

28 Amendment of the *Occupational Health and Safety (Commonwealth Employment) Act 1991*

The amendment of the *Occupational Health and Safety (Commonwealth Employment) Act 1991* made by Schedule 2 to this Act applies to things done at or after the commencing time by or in relation to the Commissioner of the Australian Federal Police, a Deputy Commissioner of the Australian Federal Police or an AFP employee (all within the meaning of the *Australian Federal Police Act 1979* as in force at and after the commencing time).

34 Warrants or writs etc. may continue to be executed

If, immediately before the commencing time, any warrant, writ, order, permission or other instrument (the *authority*) issued under a law of the Commonwealth, a State or a Territory could be executed by a person who was at that time a member, staff member or special member of the Australian Federal Police, the authority continues to be able to be executed at and after the commencing time by the person in his or her capacity as:

- (a) the Commissioner of the Australian Federal Police; or
- (b) a Deputy Commissioner of the Australian Federal Police; or
- (c) an AFP employee; or
- (d) a special member of the Australian Federal Police;

(all within the meaning of the *Australian Federal Police Act 1979* as in force at and after the commencing time).

Table A

Note: A person who is a member or staff member of the Australian Federal Police immediately before the commencing time is taken to be engaged as an AFP employee. Similarly, a person who is a special member of the Australian Federal Police immediately before the commencing time is taken to be appointed as a special member. See item 2 of this Schedule.

35 Regulations dealing with matters of a transitional or saving nature

- (1) The Governor-General may make regulations, not inconsistent with any other provision of this Schedule, prescribing matters of a transitional or saving nature in relation to the amendments made by Schedule 1 or 2.
- (2) Regulations made under this item within one year after the commencement of this item may commence on a day earlier than the day on which they are made, but not earlier than the commencement of this item.

Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000 (No. 137, 2000)

Schedule 2

418 Transitional—pre-commencement offences

- (1) Despite the amendment or repeal of a provision by this Schedule, that provision continues to apply, after the commencement of this item, in relation to:
 - (a) an offence committed before the commencement of this item; or
 - (b) proceedings for an offence alleged to have been committed before the commencement of this item; or
 - (c) any matter connected with, or arising out of, such proceedings;as if the amendment or repeal had not been made.
- (2) Subitem (1) does not limit the operation of section 8 of the *Acts Interpretation Act 1901*.

Table A

419 Transitional—pre-commencement notices

If:

- (a) a provision in force immediately before the commencement of this item required that a notice set out the effect of one or more other provisions; and
 - (b) any or all of those other provisions are repealed by this Schedule; and
 - (c) the first-mentioned provision is amended by this Schedule;
- the amendment of the first-mentioned provision by this Schedule does not affect the validity of such a notice that was given before the commencement of this item.

Employment, Workplace Relations and Small Business Legislation Amendment (Application of Criminal Code) Act 2001 (No. 142, 2001)

4 Application of amendments

- (1) Each amendment made by this Act applies to acts and omissions that take place after the amendment commences.
- (2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.

Occupational Health and Safety (Commonwealth Employment) Amendment (Employee Involvement and Compliance) Act 2004 (No. 122, 2004)

Schedule 1

170 Time of effect of notices

The amendments made by items 52 and 91 apply in relation to notices issued on or after the commencement of those items.

171 Reports of investigation

The amendment made by item 106 applies in relation to an investigation begun on or after the commencement of that item.

Table A

174 Regulations prescribing penalties

Regulations that were:

- (a) made under paragraph 82(1)(h) of the *Occupational Health and Safety (Commonwealth Employment) Act 1991*; and
- (b) in force immediately before the substitution of that paragraph by item 154;

continue in force as if they had been made under that paragraph as substituted by that item.

National Occupational Health and Safety Commission (Repeal, Consequential and Transitional Provisions) Act 2005 (No. 135, 2005)

Schedule 2

7 Saving provision

Subsection 70(2) of the *Occupational Health and Safety (Commonwealth Employment) Act 1991*, as in force immediately before the commencement of item 6 of this Schedule, is to be taken to continue in force for the purpose of incorporating, in a code of practice prepared by the Commission for Ministerial approval under section 70 of that Act as so in force, any national standard or a code of practice:

- (a) that was declared under subsection 38(1) of the *National Occupational Health and Safety Commission Act 1985*; and
- (b) that it was not practicable to so incorporate before the repeal of subsection 70(2).

OHS and SRC Legislation Amendment Act 2006 (No. 98, 2006)

Schedule 1

40 Special provision about licence fees

- (1) In this item:

Comcare has the same meaning as in the SRC Act.

Commission has the same meaning as in the SRC Act.

extension commencement means the commencement of item 11 of this Schedule.

Table A

OHS Act means the *Occupational Health and Safety Act 1991*.

SRC Act means the *Safety, Rehabilitation and Compensation Act 1988*.

- (2) This item applies if:
- (a) the extension commencement occurs on a day in a financial year (the *relevant financial year*), other than on the 1 July that is the start of that financial year; and
 - (b) a body corporate (the *licensee*), in relation to which a licence under Part VIII of the SRC Act is in force on the extension commencement, becomes an employer for the purposes of the OHS Act on the extension commencement because of an amendment or amendments made by this Schedule.

Note: If the extension commencement is on the 1 July that is the start of a financial year, the licence fee imposed by section 104A of the SRC Act will cover recoupment of costs incurred in carrying out functions under both the SRC Act and OHS Act in relation to the licensee and that year. It is only if the extension commencement is on a later day in a financial year that the OHS costs will not (but for this item) be able to be recouped.

- (3) On the extension commencement, the licensee becomes liable to pay a licence fee in respect of the continued holding of the licence.
- (4) The amount of the licence fee is the amount notified in writing to the licensee by the Commission, being the amount estimated by the Commission to represent that part of the cost incurred by the Commission and by Comcare in carrying out their respective functions under the OHS Act during the relevant financial year that is reasonably referable to the licensee.
- (5) The licence fee is payable to Comcare within such period after it is notified to the licensee as Comcare determines.
- (6) The SRC Act applies in relation to the licence fee as if it were a licence fee under section 104A of that Act.
- (7) The licence fee is in addition to the licence fee for which the licensee is liable under section 104A of the SRC Act in relation to the relevant financial year.

Schedule 2

4 Definitions

In this Part:

Comcare has the same meaning as it has in the SRC Act.

Table A

Commission has the same meaning as it has in the SRC Act.

OHS Act means the *Occupational Health and Safety (Commonwealth Employment) Act 1991*.

SRC Act means the *Safety, Rehabilitation and Compensation Act 1988*.

Note: Unless otherwise indicated, references in this Part to the SRC Act are references to that Act as amended by the *Safety, Rehabilitation and Compensation and Other Legislation Amendment Act 2001*.

5 Validation of regulatory contributions purportedly determined for certain bodies

- (1) This item applies if:
 - (a) during a period, being all or part of the financial year starting on 1 July 2002, a body was a Commonwealth authority for the purposes of the OHS Act but was not a Commonwealth authority for the purposes of the SRC Act; and
 - (b) Comcare has purported to make a determination under section 97D of the SRC Act of an amount of regulatory contribution to be paid by the body in respect of that financial year; and
 - (c) the body has paid that amount to Comcare.
- (2) The determination referred to in paragraph (1)(b), and any other steps taken by Comcare or the body in relation to the determination, are taken to be, and always to have been, as valid as they would have been if the body had been a Commonwealth authority for the purposes of the SRC Act during the period referred to in paragraph (1)(a).

6 Validation of licence fees purportedly notified to certain bodies

- (1) This item applies if:
 - (a) during a period, being all or part of the financial year starting on 1 July 2002, a body held a licence under Part VIII B of the SRC Act as continued in force (despite its repeal) by item 50 of Schedule 2 to the *Safety, Rehabilitation and Compensation and Other Legislation Amendment Act 2001*; and
 - (b) the Commission has purported to make a notification under section 104A of the SRC Act of an amount of licence fee to be paid by the body in respect of that financial year; and
 - (c) the body has paid that amount to Comcare.

Table A

- (2) The notification referred to in paragraph (1)(b), and any other steps taken by the Commission, Comcare or the body in relation to the notification, are taken to be, and always to have been, as valid as they would have been if the body had held a licence under Part VIII of the SRC Act during the period referred to in paragraph (1)(a).

Occupational Health and Safety (Commonwealth Employment) Amendment Act 2006 (No. 111, 2006)

Schedule 1

56 Definitions

In this Part:

commencement means the time at which item 9 of this Schedule commences.

OHS (CE) Act means the *Occupational Health and Safety (Commonwealth Employment) Act 1991*.

57 Health and safety management arrangements

- (1) This item applies for the period of 18 months after commencement.
- (2) An employer is not to be taken to breach subsection 16(1) of the OHS (CE) Act as in force after commencement by reason only of the employer having failed to develop health and safety management arrangements under paragraph 16(2)(d) of that Act.

58 Occupational health and safety policies

- (1) The amendment made by item 9 of this Schedule is not to be taken to affect the operation, after commencement, of an occupational health and safety policy that:
- (a) was developed under paragraph 16(2)(d) of the OHS (CE) Act as in force before commencement; and
 - (b) applied to employees of an employer immediately before commencement.
- (2) However, the policy ceases to apply to the employees once health and safety management arrangements have been developed by the employer under paragraph 16(2)(d) of the OHS (CE) Act as in force after

Table A

commencement, unless those arrangements provide for the policy to continue to apply.

59 Agreements between employers and involved unions

- (1) The amendment made by item 11 of this Schedule is not to be taken to affect the operation, after commencement, of an agreement of the kind referred to in subsection 16(3) of the OHS (CE) Act as in force immediately before commencement.
- (2) However, the agreement ceases to have effect if the occupational health and safety policy under which it is made ceases to apply.
- (3) The amendment made by item 14 of this Schedule is not to be taken to affect the operation, after commencement, of an agreement of the kind referred to in paragraph 21(2)(a) of the OHS (CE) Act as in force immediately before commencement.

60 Definitions

In this Part:

commencement means the time at which item 15 of this Schedule commences.

OHS (CE) Act means the *Occupational Health and Safety (Commonwealth Employment) Act 1991*.

61 Designated work groups

A designated work group in existence immediately before commencement continues in existence after commencement as if it had been established under section 24 of the OHS (CE) Act as in force after commencement.

62 Consultations

- (1) This item applies for the period of 3 months after commencement.
- (2) If consultations under section 24 of the OHS (CE) Act had begun but had not been completed before commencement, the consultations are to be completed as if the amendment made by item 15 of this Schedule had not been made.

Table A

63 Health and safety representative

A person who was the health and safety representative for a designated work group immediately before commencement continues to hold office after commencement subject to the OHS (CE) Act as in force after commencement.

64 Elections

- (1) This item applies for the period of 3 months after commencement.
- (2) If, immediately before commencement, an election for a health and safety representative was being conducted but had not been completed, the election is to be completed as if the amendments made by this Schedule had not been made.

65 Applications under section 32

If an application under section 32 of the OHS (CE) Act had been made but not determined before commencement, the application is to be determined as though the amendment made by item 23 of this Schedule had not been made.

66 Health and safety committees

- (1) If a health and safety committee was in existence immediately before commencement, it continues in existence after commencement as if the amendments made by items 25 and 54 of this Schedule had not been made.
- (2) A committee continued in existence under subitem (1) continues in existence until the earlier of the following times:
 - (a) the time of the replacement of the committee by a committee established under section 34 of the OHS (CE) Act as in force after commencement;
 - (b) the end of the period of 6 months after commencement.
- (3) An employer is not to be taken to breach section 34 of the OHS (CE) Act, as amended by item 25 of this Schedule, in respect of the employer's employees if a committee continues in existence under this section in respect of those employees.