
INDUSTRIAL SAFETY, HEALTH, AND WELFARE ACT 1977

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INDUSTRIAL SAFETY, HEALTH, AND WELFARE

No. 60 of 1977

AN ACT to provide for the safety, health, and welfare of persons employed, engaged in, or affected by industry, and to provide for the safety of persons using amusement devices and public stands, and to repeal certain enactments.

[21 September 1977]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

PART I

PRELIMINARY

1—(1) This Act may be cited as the *Industrial Safety, Health, and Welfare Act 1977*. Short title and commencement.

(2) This Act shall commence on a day to be fixed by proclamation.

Repeal.

2 Each enactment that is specified in Schedule I is repealed from the day fixed by proclamation in respect of that enactment.

Interpretation.

3—(1) In this Act, unless the contrary intention appears—

“ amusement device ” means a structure that is used, or designed or intended for use, or capable of being used, for amusement, games, recreation, sightseeing, or entertainment on which persons are or may be carried, raised, lowered, or supported—

(a) by the structure while it is in motion; or

(b) by a part of the structure or by any car, carriage, platform, cage, boat, plank, chair, seat, device, or thing while that part, car, carriage, platform, cage, boat, plank, chair, seat, device, or thing is in motion,

and includes the supporting structure and the access structures and machinery, equipment, and gear used, or designed or intended to be used, or capable of being used, in connection with an amusement device;

“ appeal tribunal ” means the Industrial Safety, Health, and Welfare Appeal Tribunal constituted under section 44;

“ Assistant Secretary ” means the Assistant Secretary for Labour;

“ authorized officer ” means a person who is appointed as, or who is entitled to perform the duties of, an authorized officer pursuant to sections 9 and 10;

“ Board ” means the Industrial Safety, Health, and Welfare Board established under section 16;

“ compressed air work ” means the carrying out of work in an industry by a person while breathing any gas or mixture of gases at a pressure greater than the atmospheric pressure;

“ construction work ” has the meaning assigned to that expression in section 4;

“ employee ”—

- (a) in relation to an industry includes any person employed or engaged in that industry, whether or not the person is so employed or engaged under a contract of employment; and
- (b) in relation to any educational or other training establishment includes any person who uses machinery in that establishment.

“ employees’ safety representative ” means any person who is an employees’ safety representative by virtue of section 34;

“ factory ” has the meaning assigned to that expression in section 5;

“ gear ” includes a ladder, plank, rope, chain, coupling, fastening, fitting, hoist-block, pulley, hanger, sling, brace, or other movable contrivance used or intended to be used on or in connection with construction work, scaffolding, an amusement device, or a public stand;

“ hoisting appliance ” means any crane or hoist or other appliance or contrivance used or capable of being used for raising, lowering, handling, or transporting loads;

“ industry ” means any industry, trade, business, undertaking, profession, calling, function, process, or work in which persons are employed or engaged, and includes the use of machinery in an educational or training establishment;

“ machinery ” means any arrangement of parts the combined action of which applies mechanical force to a purpose, and includes any mechanical means for driving or motivating parts so arranged;

“ occupier ” in relation to a work place means the person employing or causing persons to be engaged in any industry carried on in or on that work place and includes a manager, foreman, agent, or other person acting in the general management or control of that work place;

“ outworker ” means a person who, outside a factory, but for and on behalf of the occupier of a factory, wholly or partly prepares or manufactures an article for trade or for sale or for purposes of gain;

“ owner ” means in relation to a work place the person who—

- (a) has the estate of freehold in possession of; or

(b) is entitled to erect, alter, or pull down buildings on, the site thereof;

“ pressure vessel ” means—

(a) any vessel in which—

(i) steam is generated under a pressure greater than atmospheric pressure; or

(ii) water is heated under a pressure greater than atmospheric pressure to a temperature exceeding 99 degrees Celsius; or

(b) any other vessel in which liquid or gas is subjected to a pressure greater than atmospheric pressure for application in any engineering, industrial, or commercial process or purpose;

“ public stand ” means a stand that is temporarily erected or temporarily set up to support members of the public attending any activity, function, meeting, or other gathering, and includes the supporting structure and access structures;

“ scaffolding ” means any structure used or intended to be used for the support or protection of employees engaged in or in connection with—

(a) any construction work; or

(b) the erection or dismantling of—

(i) machinery;

(ii) plant or equipment; or

(iii) stacks of goods or materials,

and includes the materials used or intended to be used in the erection of that structure;

“ Secretary ” means the Secretary for Labour;

“ shop ” means any premises where the industry of—

(a) selling goods by retail to the public;

(b) hairdressing;

(c) pawnbroking; or

(d) an eating house,

is carried on;

“ shoring ” means any material or equipment used for temporary support—

(a) of any building or structure or any part of a building or structure; or

(b) in connexion with excavating, shaft sinking, or tunnelling;

“ work place ” means any premises in which persons are employed or engaged in industry.

4—(1) Subject to subsection (2), for the purposes of this Act ^{Construction work.} “ construction work ” means work in respect of or in connection with—

(a) building work;

(b) excavation, shaft sinking, or tunnelling;

(c) the construction or maintenance of a road or the permanent way of a railway or tramway;

(d) dredging;

(e) the placing, laying, or maintenance of pipes or cables; and

(f) earth moving by power driven equipment.

(2) The Governor may by order declare work or work of a class or kind—

(a) to be construction work; or

(b) not to be construction work.

(3) In this section “ building work ” means work in respect of or in connection with constructing, erecting, adding to, repairing equipping, finishing, painting, cleaning, sign-writing, or demolishing which, when carried out in relation to a building or structure, is carried out at or adjacent to the site of the building or structure.

5—(1) For the purposes of this Act “ factory ” means premises ^{Factory.} in or on which persons, including the occupier of those premises, are employed or engaged, directly or indirectly, in a handicraft, or in making, preparing, altering, repairing, ornamenting, finishing, cleaning, sorting, or adapting articles for trade or for sale or for purposes of gain, and includes—

(a) premises in or on which the sorting or packing of articles or the washing or filling of bottles or containers is carried on preliminary, or incidentally, to the work carried on in a factory;

- (b) a laundry or dye works or any other premises in or on which articles of clothing are cleaned, pressed, dyed, or repaired, whether or not the work carried on therein is carried on—
 - (i) as an ancillary to another business;
 - (ii) incidentally to the purposes of a public or charitable institution; or
 - (iii) wholly or partly by the customer;
- (c) premises in or on which bread, biscuits, cakes, cereal foods for human consumption, pastry, muffins, crumpets, sweetmeats, confectionery, sugar goods, or such other articles or goods as may be prescribed are baked or made for trade or sale, and premises used in connection with, or as ancillary to, those premises for the purpose of storing articles or goods when baked or made or that are proposed to be baked or made, or any ingredients or materials used for or in connection with the baking or making thereof;
- (d) premises in or on which electricity is generated or transformed as an illuminant or a motive power for trade or sale or for purposes of gain, or in which any kind of gas is produced for those purposes;
- (e) a yard or dry dock including the precincts of a yard or dry dock in which ships are constructed, reconstructed, repaired, refitted, or broken up;
- (f) premises in or on which the construction, reconstruction, maintenance, or repair of locomotives, vehicles, or plant for use for transport purposes is carried on;
- (g) premises used for the storage of gas in gasholders;
- (h) premises in or on which articles are made or prepared incidentally to the carrying on of construction work, not being the premises in which that work is carried on;
- (i) a warehouse; and
- (j) premises other than a warehouse in or on which goods are kept by a transport operator—
 - (i) after receipt of the goods for carriage by him;
 - (ii) in transit;
 - (iii) awaiting delivery; or
 - (iv) for safe keeping for reward, other than in a bank or safety deposit.

(2) Notwithstanding subsection (1) a factory does not include—

- (a) premises used exclusively for the manufacture of dairy produce;
- (b) a ship;
- (c) premises, in or on which goods are kept while in transit, that are on a wharf as defined by the *Marine Act 1976*; or
- (d) any part of a factory that is a shop or an office.

6 The Governor may by order exempt—

- (a) any machinery or machinery of a class or kind; or
- (b) any industry or industry of a class or kind,

Exemption of machinery, industry, &c.

from any of the requirements of this Act.

7 The provisions of this Act, except those relating to pressure vessels, do not apply to mines within the meaning of the *Mines Inspection Act 1968*. Saving.

8 This Act binds the Crown.

Act binds Crown.

PART II

ADMINISTRATION

Division I—Officers

9—(1) The Governor may, under and subject to the provisions of the *Public Service Act 1973*, appoint, for the purposes of this Act—

Appointment of Secretary, Assistant Secretary for Labour, and officers.

- (a) a person to be the Secretary for Labour;
- (b) a person to be the Assistant Secretary for Labour; and
- (c) such other officers as the Governor thinks necessary.

(2) The Secretary, the Assistant Secretary, and other officers holding offices under the *Factories, Shops, and Offices Act 1965* at the commencement of this Act shall be deemed to have been appointed under the authority of this section.

(3) The Secretary and the Assistant Secretary are, by virtue of their offices, authorized officers for the purposes of this Act.

(4) The Assistant Secretary, in the event of the illness or absence of the Secretary, has, and may exercise and perform, the powers, authorities, duties, and functions of the Secretary under this Act or any other Act, and has such other powers, and shall perform such

other duties, as the Secretary, subject to the provisions of the *Public Service Act 1973*, may direct, and a reference in this Act to the Secretary shall be construed as including a reference to the Assistant Secretary when acting during the illness or absence of the Secretary.

Authorized
officers.

10—(1) The Secretary may—

(a) appoint an officer of the Department of Labour and Industry;
or

(b) appoint, subject to subsection (2)—

(i) an officer of any other department of the Public Service; or

(ii) an officer of any statutory authority,

to be an authorized officer for the purposes of this Act or such of the purposes as may be specified in the certificate of his appointment.

(2) No officer shall be appointed as an authorized officer pursuant to subsection (1) (b) except—

(a) where the officer is employed in a department, with the approval of—

(i) the head of the department; and

(ii) in the case of an officer who is subject to the *Public Service Act 1973*, the Public Service Board; or

(b) where the officer is employed by a statutory authority, with the approval of that authority.

(3) Where the Secretary appoints an officer as an authorized officer pursuant to subsection (1) he shall furnish the officer with a certificate of appointment

(4) Where, pursuant to an agreement between the Governor and the Governor-General of the Commonwealth, an officer of the Commonwealth for the purposes of this Act is appointed—

(a) as an authorized officer; or

(b) to perform the duties of an authorized officer,

the Minister shall furnish to that officer a certificate of his appointment.

(5) On applying for admission to a work place, proposed work place, premises or place that he has reason to believe to be a work place, an authorized officer shall, if required to do so by the occupier of that work place, proposed work place, premises, or place, produce to him the certificate furnished to the authorized officer pursuant to this section.

Division II—Powers and duties of officers

11—(1) An authorized officer may at any time inspect and examine any place if he has reasonable cause to believe that an industry is or is intended to be carried on, or an amusement device or public stand is located, in or on that place and may—

Powers of authorized officers.

- (a) make such examination and inquiry and conduct such tests as may be necessary to ascertain whether the provisions of this Act are being complied with;
- (b) require the production of any record, book, list, or document required to be kept by a person under this Act; and
- (c) exercise such other powers and authorities as may be prescribed or as may reasonably be necessary for carrying this Act into effect.

(2) For the purposes of the exercise of his powers under this section an authorized officer may enter a place referred to in subsection (1).

(3) No person shall be required, in respect of the powers and authorities conferred on an authorized officer referred to in subsection (1), to answer any questions or give any information tending to incriminate him.

(4) An authorized officer may, in the exercise of any powers conferred on him in respect of entering, inspecting, and examining a place referred to in subsection (1), take with him an interpreter appointed under subsection (5) and where an interpreter is so taken by an authorized officer—

- (a) any question put or requirement made by the interpreter on behalf of the authorized officer shall be deemed to have been put or made by the authorized officer; and
- (b) a reply to a question or requirement, made to the interpreter, shall be deemed to have been made to the authorized officer.

(5) The Minister may, after consultation with the appropriate officer of the Commonwealth, appoint, by a notice in the *Gazette*, any person who, in his opinion, is qualified by his knowledge of any language to be an interpreter for the purposes of this Act.

(6) No person shall—

- (a) obstruct or wilfully delay an authorized officer or interpreter in the execution of his functions under this section;

- (b) fail to comply with any requirements made by an authorized officer under this section;
- (c) fail to answer truly, or to reply to, any question that an authorized officer is authorized to ask under this section;
- (d) directly or indirectly, prevent any person from appearing before or being questioned by an authorized officer.

Taking of
samples for
analysis.

12—(1) Subject to subsection (2), an authorized officer may take for analysis a sample of a substance that is in use or intended to be used in or in connection with any process or work carried on or intended to be carried on in a work place, being a substance in respect of which he suspects a contravention of any of the provisions of this Act or that, in his opinion, is likely to, or may prove on analysis to be likely to, cause bodily injury to, or injury to the health of, persons employed in the work place.

(2) Before taking a sample pursuant to subsection (1), an authorized officer shall notify his intention to do so to the occupier, or, if the occupier is not readily available, to another person who, in his opinion, is responsible for the carrying out of work in the work place.

(3) The occupier of a work place, or the person to whom an authorized officer notifies his intention to take a sample, at the time when a sample is taken under this section may, on providing the authorized officer with the necessary appliances, require the authorized officer to divide the sample into 3 parts and to mark and seal or fasten up each part in such a manner as its nature permits and, except as provided by subsection (4), the authorized officer shall comply with that requirement.

(4) Where, in the opinion of an authorized officer, a sample cannot be divided without damage to the whole sample, or the division of the sample, by reason of the nature of the substance from which the sample is taken, is impracticable, the authorized officer may refuse to divide the sample as required by subsection (3).

(5) Where an authorized officer has refused under subsection (4) to divide the sample, he shall mark and seal or fasten up the whole sample in such a manner as its nature permits and submit the sample to the Government Analyst for analysis by him.

(6) Where a sample is divided as provided by subsection (3), the authorized officer—

- (a) shall deliver one part to the occupier of the work place or the person whom he has notified under subsection (2);

(b) shall submit one part to the Government Analyst for analysis by him; and

(c) shall retain one part.

(7) The occupier of a work place, or, in the absence of the occupier, the person to whom the authorized officer notifies his intention to take a sample, shall allow the authorized officer to take such quantity of the substance as the authorized officer may reasonably require for the purpose of its analysis.

(8) Notwithstanding any other provision of this section, an authorized officer shall not, unless he is an inspector under the *Public Health Act* 1962, exercise any of the powers conferred on authorized officers by this section in relation to any substance that is a food or a drug within the meaning of Part VIII of that Act.

13—(1) Where, by reason of circumstances existing at any work place or at any place used or intended to be used for amusement purposes or as a public stand, an authorized officer is of the opinion that the safety or health of persons is endangered, he may by notice in writing served on the occupier of the work place or place require that occupier to take such steps as the authorized officer thinks fit and as are specified in the notice to remedy or alleviate those circumstances.

Power of authorized officer in respect of safety and health risks.

(2) Without limiting the generality of subsection (1) a notice under that subsection may, where the circumstances referred to in that subsection constitute the carrying on of any activity, require that activity to cease forthwith and the occupier of the work place or place to whom the notice is directed shall give effect to that requirement.

(3) A notice referred to in subsection (2) shall specify the reasons for requiring the activity to cease.

(4) Any notice issued under this section may be revoked—

(a) by another notice of the authorized officer issuing the notice;
or

(b) by a notice of the Secretary.

(5) The occupier of a work place or place may within 14 days after a notice under this section is served on him appeal to the appeal tribunal if within that period the occupier has requested the Secretary to revoke the notice.

(6) On an appeal under this section, unless the appeal tribunal dismisses the appeal, it may revoke or vary the notice.

(7) Subject to subsection (8), where an appeal is instituted under this section the notice is of no effect pending the final determination or the withdrawal of the appeal.

(8) Where an appeal is instituted against a notice under subsection (2) the notice shall cease to have effect if the appeal tribunal, in its discretion, so directs.

(9) Where the appeal tribunal makes a direction under subsection (8) that direction shall take effect from the day on which it is made.

Authorized officer not to divulge information.

14—(1) No person who—

(a) is, or has at any time been, an authorized officer; or

(b) has exercised any power or function under this Act, shall divulge, otherwise than in the course of his official duties, any manufacturing or commercial secrets or working processes that come to that person's knowledge—

(c) as an authorized officer; or

(d) in the exercise of those powers or functions.

(2) No person who is an authorized officer shall have any direct or indirect financial interest, other than an interest which he has disclosed in writing to the Secretary, in any premises or place which is subject to the exercise by him of his powers and functions as an authorized officer.

Protection from liability.

15 Where an action is brought against an authorized officer in respect of an Act done in the exercise or purported exercise of a power or function under this Act the Minister may indemnify him against the whole or part of any damages and costs or expenses which he may have been ordered to pay or may have incurred, if the Minister is satisfied that he honestly believed that the act complained of was within his powers and that his duty as an authorized officer required or entitled him to do it.

Division III—Industrial Safety, Health, and Welfare Board

The Industrial Safety, Health, and Welfare Board.

16—(1) There shall be established a board to be known as the Industrial Safety, Health, and Welfare Board which shall consist of 5 members appointed by the Governor, of whom one shall be the Secretary who shall be the chairman of the Board, and, of the remainder—

(a) one shall be the Director of Public Health;

(b) one shall be the Director of Mines;

(c) one shall be a representative of the occupiers of work places;
and

(d) one shall be a representative of the employees in work places.

(2) A member of the Board referred to in subsection (1) (c) or (d), unless he sooner resigns or otherwise ceases to hold office, continues in office for a period of 5 years, except that, when a member of the Board dies, or ceases to hold office otherwise than by reason of effluxion of time, the member appointed to fill the vacancy ceases to hold office at the expiration of the unexpired term of office of the member in whose place he is appointed.

(3) A member of the Board is not, as such, subject to the *Public Service Act 1973*, but an officer of the Public Service may hold office as a member of the Board in conjunction with his office as an officer of the Public Service.

(4) A member of the Board may be paid such remuneration and allowances as the Minister approves.

17—(1) The chairman of the Board, or if he is absent, such one of the other members present as they may choose, shall preside at each meeting of the Board. Proceedings of the Board.

(2) Three members of the Board constitute a quorum at any meeting of the Board.

(3) A member of the Board may be represented at meetings of the Board by a deputy appointed by him by notice in writing to the chairman of the Board.

(4) Subject to this Act the Board may regulate its own proceedings.

18—(1) The Board shall—

Powers of the Board.

(a) investigate and make recommendations to the Minister with respect to measures necessary for securing the safety, health and welfare of employees;

(b) collaborate with—

- (i) organizations of employers and employees; and
- (ii) authorities and bodies that are engaged in technical research,

in relation to any of the matters specified in paragraph (a); and

(c) investigate and report on any questions referred to it by the Minister in relation to any of the matters referred to in this section.

(2) A member of the Board may, if he is authorized in writing by the chairman, enter, at any reasonable time, a work place and inspect any work being carried on or performed in or at that place.

(3) No member of the Board shall divulge to a person other than the Minister or an officer of the Department of Labour and Industry any information relating to any matter that comes to his knowledge in consequence of his position as a member of the Board, or make use of any information that so comes to his knowledge except for the purpose of the performance of his duties as a member of the Board.

Division IV—Advisory committees

Advisory
committees.

19—(1) The Board may establish committees to advise the Secretary on matters affecting industrial safety, health, or welfare.

(2) An advisory committee may, with the consent of the Minister, be comprised wholly or partly of persons who are not members of the Board, and may, with the approval of the Public Service Board, include officers of the Public Service.

(3) A member of an advisory committee may, subject to the *Public Service Act 1973*, be paid such remuneration and allowances as the Minister approves.

(4) For the purposes of subsection (1) an advisory committee shall, at the request of the Secretary or of its own motion, undertake inquiries, seek and consider representations, or do such other things as are necessary or desirable in order to be able to advise the Secretary in accordance with that subsection.

(5) The appointment of a committee shall lapse at the end of each term of 5 years for which a member appointed to the Board under section 16 (1) (c) or (d) is ordinarily appointed.

PART III

NOTIFICATIONS, REGISTRATIONS, &C.

Division I—Factories and shops

Prohibition on
use of
unregistered
premises.

20—(1) No person shall carry on, or cause or allow to be carried on, the industry of a factory or shop on any premises unless those premises are registered for the carrying on of that industry.

(2) This section does not prohibit the carrying on of the industry of a factory or shop on any premises in accordance with a permit in force in respect of those premises under section 22.

21—(1) An application for the registration of any premises under this Part shall be made to the Secretary in the prescribed form and shall—

Registration of premises.

- (a) specify the full name of the person making the application;
- (b) specify the premises to which the application relates;
- (c) specify the type of industry for which the registration is sought;
- (d) specify the maximum number of persons that it is intended to employ at the premises;
- (e) specify the name, if it is different from that of the applicant, under which the industry is to be carried on on the premises; and
- (f) contain such other particulars as are prescribed.

(2) Where an application is made under this section, the Secretary shall register the premises to which the application relates for the carrying on of the industry specified in that application, but shall not do so unless he is satisfied that—

- (a) the premises are suitable for carrying on that industry; and
- (b) the industry could be carried on on those premises in compliance with this Act.

22—(1) If the Secretary refuses to register any premises he may issue a permit authorizing the carrying on on those premises of such industry as is specified in the permit subject to such conditions as may be specified in that permit.

Temporary permits pending registration.

(2) A permit issued under this section remains in force for such period as may be specified in the permit, but the Secretary may, from time to time, extend that period by endorsement of the permit.

(3) Where—

- (a) on an application under section 21, the Secretary issues a permit under this section he shall notify the applicant of the requirements that must be complied with before the

premises to which the application relates can be used for the carrying on of the industry specified in the application; and

- (b) if those requirements are complied with while the permit remains in force, the Secretary, on a fresh application being made to him, shall, if he is satisfied that those requirements have substantially been fulfilled, register those premises for the carrying on of that industry.

Appeals in respect of registration or permits.

23—(1) Where the Secretary—

- (a) refuses to register premises pursuant to section 21 (2); or
 (b) refuses to issue a permit pursuant to section 22, or to extend the period for which that permit was issued under that section,

he shall serve on the applicant a notice of his refusal specifying the reasons for such refusal.

(2) A person who is aggrieved by a refusal of the Secretary under section 21 or section 22 may, within 14 days after a notice of his refusal under this section is served on him, appeal to the appeal tribunal.

(3) On an appeal under this section, unless the appeal tribunal dismisses the appeal it may revoke or vary the notice and may direct the Secretary to—

- (a) register the premises;
 (b) issue a permit; or
 (c) extend the period for which a permit was issued under section 22.

Periodical renewal of registrations.

24—(1) The registration of any premises, unless it is renewed or further renewed, ceases to have effect—

- (a) in the case of premises registered as a shop, on 31st March;
 or
 (b) in the case of premises registered as a factory, on 31st December,

next following the day on which the premises were registered or their registration was last renewed.

(2) Notwithstanding subsection (1) the Secretary may, on application by the occupier of any premises, register those premises for a period of 3 years and the registration thereof, unless it is renewed

or further renewed, ceases to have effect on the triennial of the relevant date therein referred to next following the day on which the premises were registered or their registration was last renewed.

(3) On application made to the Secretary in the prescribed manner and on payment of the prescribed fee the registration of the premises in relation to which the application relates shall be renewed.

25—(1) Where any premises have ceased to be used for the carrying on of the industry in respect of which they are registered the Secretary may, by notice in writing served on the owner of those premises, revoke the registration of those premises. Revocation of registration.

(2) Where an owner referred to in subsection (1) is aggrieved by the decision of the Secretary to revoke the registration of premises in accordance with that subsection he may appeal to the appeal tribunal within 14 days after the day on which the notice of revocation is served on him.

(3) On an appeal under this section unless the appeal tribunal dismisses the appeal it may revoke or vary the notice and may direct the Secretary to re-register the premises.

26—(1) On the application for the registration of any premises there shall be paid to the Secretary the prescribed fee, and he shall not register those premises unless that fee has been paid to him. Fees in respect of registration.

(2) If the registration of any premises is refused the Secretary shall within 30 days of such refusal refund the fee paid on the application for the registration of those premises.

(3) For the purposes of this section—

(a) the occupier of a factory or shop shall be deemed to be a person who is employed in the factory or shop; and

(b) the number of persons employed in a factory or shop shall be deemed to be—

(i) in respect of the year in which the factory or shop is first registered, the maximum number to be employed therein at any one time during that year; and

(ii) in respect of a later year, the maximum number employed therein at any one time during the last preceding year.

(4) Notwithstanding subsection (3) (b), for the purposes of the calculation of the fee in respect of the registration or the renewal or

further renewal of the registration of any premises for a period of 3 years, the number of persons employed in a factory or shop shall be deemed to be—

- (a) in respect of the period of the first registration of a factory or shop, the maximum number to be employed therein at any one time during that period; and
- (b) in respect of the period of any renewal or further renewal of that registration, the maximum number employed therein at any one time during the year preceding that period.

(5) Such fee as may be prescribed is payable on the renewal of the registration of any premises, and, if that fee is not paid within one month after the registration becomes due for renewal, the registration ceases to be of any further effect.

(6) Where, at any time, the number of persons employed on any premises exceeds the number by reference to which the fee last required to be paid in respect of those premises under this section was calculated, the occupier shall pay to the Secretary the difference between that fee and the fee that would have been required to have been so paid if it had been calculated by reference to the actual number of persons so employed at that time.

(7) This section does not apply in respect of the registration of premises for use for the carrying on of—

- (a) a workshop for handicapped persons; or
- (b) a shop conducted by an organization carried on for charitable or religious purposes.

Notice of
closures.

27 Where any premises cease to be used for the purposes of the industry in respect of which they are registered the person who was the occupier of those premises when they ceased to be so used shall, within 7 days after their ceasing to be so used, give notice of the fact in writing to the Secretary.

Notices by
new occupier.

28 Any person who becomes the occupier of any premises registered as a factory or shop shall, as soon as possible after becoming occupier of those premises, give notice of the fact to the Secretary in the prescribed manner together with such particulars as may be prescribed.

Division II—Construction work

Notice of
commencement
of construction
work.

29—(1) A person who intends to undertake construction work shall, in such cases as may be prescribed—

- (a) give notice of his intention in writing to the Secretary at least 24 hours before commencing that work;

(b) state the place at which, and the date on which, it is intended to commence the work and such other particulars as the Secretary may require; and

(c) pay to the Secretary the prescribed fee.

(2) In proceedings for an offence under this section it is a defence to prove that the construction work was urgently necessary in the interests of safety or health, or as a consequence of an accident or unforeseen events, and that the notice and fee referred to in subsection (1) were given and paid to the Secretary as soon as practicable.

(3) On conviction for an offence under this section involving a failure to pay the prescribed fee the court shall, in addition to any penalty it may impose, order the payment of that fee to the Secretary.

Division III—Work injuries and accidents

30—(1) This section applies to every work injury that occurs in or about any work place. Notice of work injuries.

(2) Where a work injury occurs to which this section applies, the employer of the person suffering the work injury shall keep for a period of not less than 3 years a record of the work injury containing such of the particulars referred to in subsection (3) as are relevant, and in the case of a work injury which incapacitates a person for 3 clear days or more, or causes loss of life, the employer shall in accordance with subsection (3) give written notice thereof to the Secretary.

(3) A notice under subsection (2) shall—

(a) where a death occurs as a result of the work injury, be given immediately after the death occurs;

(b) where the work injury incapacitates a person for 3 clear days or more, be given within 24 hours after the person responsible for giving the notice might be reasonably expected to have become aware of the fact that the incapacitated person has been or will be incapacitated for 3 clear days or more,

and state—

(c) in the case of a notice under paragraph (a), the cause of death and the name and address of the person killed; and

(d) in the case of a notice under paragraph (b), the cause, nature, and the extent of injuries sustained by the person and the name and address of that person,

and such other particulars as may be prescribed.

Notice of accidents in connection with amusement devices, &c., and scaffolding, &c.

31 Where an accident occurs—

- (a) in a work place in which any load-bearing part of any scaffolding, gear, hoisting appliance, or shoring is broken, distorted, or damaged;
- (b) at any place where there is an amusement device, public stand, or pressure vessel, which causes damage to the amusement device, public stand, or pressure vessel; or
- (c) in any premises where a lift is damaged,

the person who at the time of the accident was controlling the use of the scaffolding, gear, hoisting appliance, shoring, amusement device, public stand, pressure vessel, or the lift in connection with which the accident occurs shall, whether or not a work injury arises from that accident, as soon as practicable within 24 hours after the occurrence of the accident—

- (d) advise an authorized officer; and
- (e) give notice to the Secretary in writing, of the occurrence of the accident.

PART IV

DUTIES AND OBLIGATIONS

Occupier to comply with Act and to safeguard health and safety of employees.

32 Every occupier of a work place and every person carrying on an industry shall take reasonable precautions to ensure the health and safety of persons employed or engaged at that work place or in that industry.

Obligation of employees.

33—(1) No employee shall by any act or omission render less effective any action taken by a person for the purposes of giving effect to section 32.

- (2) Without limiting the generality of subsection (1), where—
 - (a) an employee is required to carry out any procedure for the purposes of his safety or the safety of any other person on the plant; or
 - (b) an employee is issued with any form of protective clothing or equipment,

that procedure or use of protective clothing or equipment shall be carried out or used in such manner as to achieve the purposes of section 32.

- (3) An employee who refuses or fails to comply with subsection (2) commits an offence against this Act.

34—(1) Subject to subsection (2), where 10 or more employees are employed or engaged in any work place they may elect from time to time one of their number to be an employees' safety representative for the purposes of this Act and the occupier of their work place shall permit them to do so. Employees' safety representative.

(2) The Secretary may, by his certificate, exempt any work place from the requirement of subsection (1) if he is satisfied that there is established in relation to that work place a safety committee consisting wholly or partly of representatives of employees.

(3) The Secretary may at any time revoke a certificate exempting a work place from the requirements of subsection (1) and thereupon the certificate shall have no further force or effect.

(4) For the purposes of ensuring compliance with the provisions of this Act, the occupier of a work place shall confer with the employees' safety representative, elected in that work place in accordance with this section, whenever reasonably requested to do so by that representative.

(5) Except as provided in subsection (4) or as may be prescribed the terms of employment or engagement of a safety representative for the purposes of this section remain subject to the control of the person by whom he is employed or engaged.

35—(1) In respect of premises—

Duties of owners.

(a) used in connection with a work place by the employees therein, including land over which they pass to enter or leave; and

(b) not within the occupancy of the occupier of the work place, the duties of the occupier shall be performed by the owner of those premises.

(2) Where the occupier of a work place is not able to perform a duty imposed on him by or under this Act because he is not the owner of the work place that duty shall be performed by the owner of that work place.

(3) In relation to any duties which are required by this Act to be performed by the owner, the owner shall for the purposes of this Act be deemed to be the occupier and any proceedings under this Act necessary to enforce that duty shall be taken and had accordingly.

(4) Where the occupier of a work place is not able to perform a duty imposed on him by or under this Act because he is not the owner of the work place, he shall give notice in writing of the fact to the Secretary.

(5) Where the owner of a work place incurs any expenses by reason of this section, he may, subject to any contract between him and the occupier, recover those expenses from the occupier by action in a court of competent jurisdiction or by distress as for rent.

Certain machinery for sale, &c., to comply with the prescribed requirements.

36 No person shall sell or let on hire or offer to sell or let on hire or advertise for sale or letting on hire, either as principal or agent, any machinery, gear, hoisting appliance, or scaffolding unless it complies with the prescribed requirements.

PART V

MISCELLANEOUS

Prevention of accidents, &c.

37—(1) The Secretary may, by notice in writing—

- (a) direct the occupier of a specified work place, or the occupiers of work places generally or of all work places included in a specified class of work places, to take such steps as the Secretary may deem necessary and as may be specified in the notice to prevent accidents therein; or
- (b) direct that any specified plant, equipment, or appliance shall not be used in or in connection with a specified work place.

(2) A notice under this section—

- (a) shall, in the case of a specified work place, be served on the occupier thereof; and
- (b) shall, in any other case, be published in the *Gazette* and in at least 3 newspapers published in this State.

(3) A notice under this section is not a statutory rule within the meaning of the *Rules Publication Act 1953*.

Notice to remedy defects, &c.

38—(1) Subject to subsection (2), where it appears to the Secretary that a work place, or a part thereof, is defective by reason of being—

- (a) dilapidated;
- (b) unsafe;
- (c) unfit for use;
- (d) injurious to health; or
- (e) not provided with, or insufficiently provided with—
 - (i) the sanitary conveniences and facilities for washing required under this Act;
 - (ii) proper fire-escapes, and proper appliances and equipment for the extinguishment of fire;
 - (iii) proper heating appliances; or

(iv) effective means for securing and maintaining suitable lighting (whether natural or artificial), the Secretary shall serve notice on the occupier of the work place requiring him to remedy the defect.

(2) Where a building forms part of a work place or the work place is situated within a building, the Secretary may, instead of serving notice on the occupier under subsection (1), serve notice on the owner of the building or the person receiving the rent in respect of the building, whether on his account or on account of any other person, and thereupon that owner or person shall be deemed to be the occupier of the work place for the purposes of this section.

(3) Where it appears to the Secretary that a provision of this Act is not being complied with or is being insufficiently complied with in a work place, or in a part thereof, the Secretary shall serve notice in accordance with subsection (4) on the occupier of that work place requiring that provision be complied with.

(4) A notice under this section shall specify—

(a) in the case of a notice under subsection (1)—

- (i) the nature of the defect;
- (ii) the repairs, alterations, or improvements required to be made; and
- (iii) the time within which those repairs, alterations, or improvements are to be completed; and

(b) in the case of a notice under subsection (3)—

- (i) the provision that is not being complied with, or that is being insufficiently complied with;
- (ii) the steps to be taken to secure compliance with that provision; and
- (iii) the time within which those steps are to be taken.

(5) Where a person is guilty of an offence against this section, the Minister may, in the case of a factory or shop, direct the Secretary to cancel the registration of that factory or shop.

(6) Where the registration of a factory or shop is cancelled in accordance with subsection (5) the factory or shop shall not be re-registered unless the Secretary is satisfied that all the requirements of the Act have been complied with.

(7) Where, pursuant to a notice served on him under this section, an occupier installs or provides a device for securing the safety of employees who work in the work place or any part thereof, an employee who, without lawful excuse, removes or tampers with that device is guilty of an offence against this Act.

Appeals against notices in respect of prevention of accidents, &c. notices to remedy defects, &c.

39—(1) A person who is aggrieved by a notice of the Secretary under section 37 or section 38 may, within 14 days after a notice under section 37 or section 38 is served on him, appeal to the appeal tribunal.

(2) Where an appeal is instituted under this section against a notice of the Secretary under section 37 or section 38 the notice is of no effect pending the final determination or withdrawal of the appeal.

(3) On an appeal under section 38 unless the appeal tribunal dismisses the appeal it may revoke or vary the notice.

(4) On an appeal under section 37 in respect of a particular work place the appeal tribunal may direct that the application of a notice under that section be modified or varied in its application to that work place.

Service of notices.

40—(1) A notice required or authorized by this Act to be served on a person may be so served—

- (a) by delivering it to him personally;
- (b) by leaving it addressed to him at his usual or last known place of abode or business; or
- (c) by sending it by certified mail addressed to him at his usual or last known place of abode or business.

(2) Where a person has notified the authority by which a notice is required or authorized to be served on him under this Act of an address for service that notice may be so served—

- (a) by leaving it at the place of that address with some person apparently over the age of 16 years and apparently employed or residing at that address; or
- (b) by sending it by certified mail addressed to him at that address.

(3) Where a notice is required or authorized to be served on a person as the owner or as the occupier of premises the notice shall be taken to be duly served if—

- (a) being addressed to him either by name, or by the description of “the occupier” or “the owner”, of the premises (describing them) it is delivered or sent in the manner specified in subsection (1); or

(b) being so addressed it—

- (i) is sent by certified mail addressed to these premises and is not returned to the authority by whom it is sent;
- (ii) is delivered to some person on the premises; or
- (iii) is affixed conspicuously to some object on the premises.

(4) A notice served in accordance with subsection (3) binds every person coming within the definition of the expression “occupier”.

41 Notwithstanding any Act or law to the contrary, no person by any contract or agreement shall—

- (a) preclude or exempt himself or any other person from doing any act or thing that he or that other person is required to do for complying with the provisions of this Act; or
- (b) make any other person liable to any penalty or forfeiture for doing any act or thing that that other person is so required to do.

42—(1) The Secretary shall prepare and submit to the Minister annually a report on the administration of this Act.

(2) The report shall be prepared in general terms and shall not disclose, except in the form of general statistical information, the contents of any record of any person employed for the purposes of this Act or of any work done by him in the course of that employment.

(3) The Minister shall cause a copy of the report submitted to him under subsection (1) to be laid on the table of each House of Parliament within 14 days of the receipt thereof if Parliament is then in session or if Parliament is not then in session within 14 days after the commencement of the next session of Parliament.

43 Proceedings in respect of offences against this Act shall be instituted and heard and determined summarily.

44—(1) For the purposes of this Act there shall be an appeal tribunal to be known as the Industrial Safety, Health, and Welfare Appeal Tribunal.

(2) The appeal tribunal shall be constituted by one person, who shall be such one of the magistrates as the Governor may, by notice in the *Gazette*, appoint as the person constituting the appeal tribunal.

(3) In the event of the sickness or absence of the person appointed to constitute the appeal tribunal or in a case where that person deems it improper or undesirable that he should adjudicate on the hearing of a particular appeal, the Governor may appoint some other magistrate to act in the place of the person appointed to constitute the appeal tribunal, and, subject to the conditions or limitations, and for the period, specified in his appointment the magistrate so appointed has all the powers and shall perform all the duties of the person appointed to constitute the appeal tribunal, and any reference in this Act to the person appointed to constitute the appeal tribunal shall be construed accordingly as including a reference to a person appointed to act in the place of that person.

(4) The appeal tribunal has jurisdiction to hear and determine all appeals made to the appeal tribunal pursuant to this Act and has power to make such orders as to costs of, or incidental to, any proceedings before the appeal tribunal as the person appointed to constitute the appeal tribunal thinks fit.

Appeals.

45 An appeal shall be instituted, heard, and determined as prescribed, and the decision of the appeal tribunal on the hearing of an appeal is final.

Offences.

46—(1) A person who—

- (a) fails to comply with any direction given or requirement made by an authorized officer pursuant to this Act; or
- (b) contravenes, or fails to comply with, any provision of this Act,

is guilty of an offence against this Act and is liable to a penalty of \$500 and a further daily penalty of \$200.

(2) Where a person—

- (a) fails to comply with any direction or requisition of an authorized officer; or
- (b) contravenes, or fails to comply with, any provision of this Act,

and as a consequence of the failure or contravention, death or serious bodily injury occurs that person is guilty of an offence and is liable to a penalty of \$5 000 and a further daily penalty of \$200.

(3) Where the act or omission of a person in respect of which he is convicted continues after the conviction, that person is guilty of a further offence against this Act and is liable to a penalty of \$1 000.

(4) Where any offence committed by any person under this Act is a continuing one, that person is liable, in addition to any other penalty to which he is liable under this Act, to a penalty of \$20 for every day on which the offence is continued.

47 In any proceedings for an offence against this Act an averment in a complaint— Proof of certain matters.

(a) that a person is an authorized officer; and

(b) that a building, structure, or place is a work place,

shall be deemed to be proved in the absence of proof to the contrary.

48—(1) Where the Secretary is satisfied that—

Exemption, &c., from application of requirements of regulations in certain circumstances.

(a) in any case it is not practicable or necessary for the occupier of any work place to comply with any requirement of any regulation; and

(b) the application of the requirement in a modified or varied form would not adversely affect the safety, health, or welfare of the employees in the work place,

he may, in that case, by notice in writing served on the occupier of the work place modify or vary the requirement and the requirement so modified or varied shall apply to that work place until the notice is cancelled in accordance with subsection (2).

(2) The Secretary may by a further notice served on the occupier cancel a notice issued under subsection (1).

49—(1) The Governor may make regulations for the purposes of this Act. Regulations.

(2) Without prejudice to the generality of subsection (1), the Governor may make such regulations as he may consider necessary for the purpose of securing the health, safety, or welfare of employees in work places.

(3) Without prejudice to the generality of subsection (2), the matters in respect of which the Governor may make regulations shall be all or any of the matters specified in Schedule II.

(4) The regulations made under this Act may apply to—

- (a) the State generally or any part thereof; or
- (b) industry or work places generally or to a specified industry or work place or to an industry or work place of a class or kind.

(5) The regulations may provide for a penalty of \$500 for a breach of or failure to comply with a regulation.

(6) The regulations made under this Act may—

- (a) adopt, either wholly or in part, and either specifically or by reference, any of the standard rules, codes, or specifications of the bodies known as the Standards Association of Australia and the British Standards Institution or of any other like authority specified in the regulations relating to any matter as to which the Governor is empowered by this Act to prescribe standards to be observed for the purposes of this Act;
- (b) incorporate by reference a provision of the Building Regulations including the application to the buildings existing at the time of the making of the regulations of the specified requirements in respect of new buildings;
- (c) exempt, either unconditionally or subject to prescribed conditions, any industry or work place or any class of industry or work place from any specified provisions of the regulations;
- (d) regulate the institution and the hearing and determination of appeals under this Act by the appeal tribunal;
- (e) authorize the Secretary to modify the application of any provision of the regulations to a particular case, so that compliance with the provision as modified shall be deemed to be compliance with the provision; and
- (f) require the notification of prescribed classes of accidents and cases of disease occurring in any industry or work place.

(7) Nothing in the regulations under this Act shall prejudice or affect the application of the Building Regulations or the General Fire Regulations.

SCHEDULE I

(Section 2)

ACTS REPEALED

Year and number of Act	Short title of Act
No. 52 of 1960	<i>Scaffolding Act 1960</i>
No. 68 of 1960	<i>Inspection of Machinery Act 1960</i>
No. 14 of 1965	<i>Factories, Shops, and Offices Act 1965</i>
No. 17 of 1966	<i>Factories, Shops, and Offices Act 1966</i>
No. 49 of 1966	<i>Inspection of Machinery Act 1966</i>
No. 79 of 1967	<i>Factories, Shops, and Offices Act 1967</i>
No. 7 of 1973	<i>Inspection of Machinery Act 1973</i>
No. 63 of 1973	<i>Inspection of Machinery Act (No. 2) 1973</i>
No. 64 of 1973	<i>Factories, Shops, and Offices Act 1973</i>

SCHEDULE II

(Section 49)

Matters in respect of which regulations may be made under section 49

1. The prevention or reduction of work injuries and the action to be taken on the occurrence of any work injury.
2. The construction, maintenance, access to, care and use of, any building structure or place comprised in any work place.
3. Certificates of competency for persons engaged in prescribed work.
4. Compressed air work.
5. The handling, prohibition of use, use and storage of dangerous, flammable and harmful substances.
6. Demolition work.
7. Electrical distribution and wiring.
8. Examination and testing of equipment.
9. Fire precautions and fire protection equipment.
10. The safety of employees engaged in isolated situations.
11. Machinery, power-driven equipment, and explosive-powered tools including—
 - (a) safety standards to be complied with in respect of machinery, whether portable, movable, or fixed, power-driven equipment, and explosive-powered tools intended for use in or in connection with industry;

- (b) the persons who may work, maintain, or have charge of machinery, power-driven equipment, and explosive-powered tools;
 - (c) the protection of persons in the vicinity of any machinery or power-driven equipment and explosive-powered tools;
 - (d) the maintenance and safeguarding of machinery, power-driven equipment, and explosive-powered tools; and
 - (e) the installing, dismantling, cleaning, working, and testing of machinery, power-driven equipment, and explosive-powered tools.
12. Boilers and pressure vessels and associated equipment.
 13. Gear.
 14. Refrigeration equipment.
 15. Amusement devices.
 16. Traffic controls.
 17. The handling and storage of materials.
 18. The protection of persons in work places from areas of hazard.
 19. Protective clothing, protective equipment, and rescue equipment.
 20. Safety supervisors.
 21. Scaffolding, formwork, falsework, and related equipment.
 22. Shoring.
 23. The carriage and handling of cash.
 24. The protection of health of employees in industry, including—
 - (a) the prevention and control of dust;
 - (b) the prevention of the escape of poisonous or deleterious vapours, fumes, and gases;
 - (c) apparatus for collecting, filtering, and preventing the inhalation of dust, vapour, fumes, and gases; and
 - (d) mechanical appliances to assist ventilation.
 25. Ventilation, heating, cooling, humidity, air space, and floor space.
 26. First-aid, medical, and nursing facilities and arrangements.
 27. Lighting.
 28. Noise levels and protection from noise.
 29. The medical examination of employees.
 30. The protection of persons in the vicinity of work places.
 31. Maximum weights that may be lifted manually by any employee of a prescribed class or kind.

32. The employment of females and young persons.
33. Control of outworkers.
34. Facilities and equipment for taking of meals by employees and the provision of meal breaks.
35. Facilities for the storage of employees' tools.
36. Seating facilities for employees.
37. Washing and toilet facilities, changing rooms, rest rooms, and drinking water.
38. The fees for doing any act or thing under this Act.
39. The fixing of fees for the registration or renewal of registration of premises subject to Division I of Part III of the Act.
40. The powers and duties of authorized officers.
41. The inspection of work places.
42. The responsibilities and duties of owners or occupiers of work places
43. The form of records, returns, notices, documents to be used, and information to be kept, given, or furnished for the purposes of this Act, and the keeping, giving, or furnishing thereof.
44. Returns to be made for the purposes of this Act.
45. Employees' safety representatives.

