



Occupational Health and Safety (Maritime Industry) Act 1993

No. 10, 1994

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About this compilation

This compilation

This is a compilation of the *Occupational Health and Safety (Maritime Industry) Act 1993* that shows the text of the law as amended and in force on 27 May 2015 (the **compilation date**).

This compilation was prepared on 29 May 2015.

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on ComLaw (www.comlaw.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on ComLaw for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on ComLaw for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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An Act to promote the occupational health and safety of persons employed in the maritime industry, and for related purposes

Part 1—Preliminary

Division 1—Short title and commencement

1 Short title

This Act may be cited as the *Occupational Health and Safety (Maritime Industry) Act 1993*.

2 Commencement

- (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 beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

Division 2—Objects and definitions

3 Objects

The objects of this Act are:

- (a) to secure the health, safety and welfare at work of maritime industry employees; and
- (b) to protect persons at or near workplaces from risks to health and safety arising out of the activities of maritime industry employees at work; and
- (c) to ensure that expert advice is available on occupational health and safety matters affecting maritime industry operators, maritime industry employees and maritime industry contractors; and
- (d) to promote an occupational environment for maritime industry employees that is adapted to their health and safety needs; and
- (e) to foster a cooperative consultative relationship between maritime industry operators and maritime industry employees on the health, safety and welfare of maritime industry employees at work.

4 Interpretation

In this Act, unless the contrary intention appears:

Australian General Shipping Register has the same meaning as in the *Shipping Registration Act 1981*.

Australian International Shipping Register has the same meaning as in the *Shipping Registration Act 1981*.

Authority means the Seafarers Safety, Rehabilitation and Compensation Authority established by the *Seafarers Rehabilitation and Compensation Act 1992*.

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coastal trading has the same meaning as in the *Coastal Trading (Revitalising Australian Shipping) Act 2012*.

contract includes any arrangement or understanding.

contractor means an individual who does work on a prescribed ship or a prescribed unit under a contract between an operator and that individual or any other person (whether an individual or not).

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 Division 1 of Part 3, or that designated work group as varied in accordance with this Act.

emergency licence has the same meaning as in the *Coastal Trading (Revitalising Australian Shipping) Act 2012*.

employee means:

- (a) a person employed by an operator on a prescribed ship or prescribed unit; or
- (b) a person who is on board a prescribed ship or prescribed unit and in relation to whom a work agreement is in force for the purposes of the *Navigation Act 2012*.

general licence has the same meaning as in the *Coastal Trading (Revitalising Australian Shipping) Act 2012*.

Government ship means a ship:

- (a) that belongs to the Commonwealth or a State or Territory; or
- (b) the beneficial interest in which is vested in the Commonwealth or a State or Territory; or
- (c) that is for the time being demised or sub-demised to, or in the exclusive possession of, the Commonwealth or a State or Territory;

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and includes a ship that belongs to an arm of the Defence Force, but does not include a ship:

- (d) that belongs to a trading corporation that is an authority or agency of the Commonwealth or of a State or Territory; or
- (e) the beneficial interest in which is vested in such a trading corporation; or
- (f) that is for the time being demised or sub-demised to, or in the exclusive possession of, such a trading corporation; or
- (g) that is operated by seafarers employed by a person other than the Commonwealth or a State or Territory.

improvement notice means an improvement notice issued under section 98.

inspector means:

- (a) a person appointed as an inspector under section 84; or
- (b) a person performing the duties and exercising the powers of an inspector under arrangements under section 106.

Inspectorate means the Australian Maritime Safety Authority established by the *Australian Maritime Safety Authority Act 1990*.

involved union means:

- (a) in relation to an employee of a particular operator—a registered union of which the employee is a member, if the employee is qualified to be a member because of the work the employee performs for that operator; or
- (b) in relation to a designated work group—a registered union of which an employee in the group is a member, if the employee is qualified to be a member because of the work the employee performs as an employee in the group.

off-shore industry mobile unit has the same meaning as it had in the *Navigation Act 1912* immediately before the repeal of that Act.

operator, in relation to a prescribed ship or a prescribed unit, means the person who has the management or control of the ship or unit.

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own includes own jointly or own in part.

person in command means:

- (a) in relation to a prescribed ship—the master, or in the absence of the master, the person on board responsible, as agent for the operator, for the operation of the ship; or
- (b) in relation to a prescribed unit—the person on board responsible, as agent for the operator, for the operation of the unit.

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

prescribed ship means a ship that:

- (a) is either:
 - (i) a ship to which Part II of the *Navigation Act 1912* would apply if that Act had not been repealed; or
 - (ii) a ship that is declared under subsection 4A(1) to be a prescribed ship; and
- (b) is not any of the following:
 - (i) a Government ship;
 - (ii) a ship or off-shore industry mobile unit to which the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* applies;
 - (iii) a ship that is declared under subsection 4A(2) not to be a prescribed ship.

prescribed unit means:

- (a) an off-shore industry mobile unit that is not self-propelled and is under tow; or
- (b) a vessel or structure declared under subsection 4B(1) to be a prescribed unit;

but does not include a vessel or structure declared under subsection 4B(2) not to be a prescribed unit.

prohibition notice means a notice issued under section 93.

Section 4A

provisional improvement notice means a provisional improvement notice issued under section 58.

registered union means:

- (a) an association of employees that is registered or recognised under the *Fair Work (Registered Organisations) Act 2009*; or
- (b) an organisation of employees registered under a State or Territory Act that deals with industrial relations; or
- (c) a body that is declared by the regulations to be a registered union for the purposes of this Act.

reviewing authority means the Fair Work Commission.

shipboard management committee means a committee with management responsibilities for a prescribed ship comprising the master and any or all of the following:

- (a) the chief engineer;
- (b) the first mate;
- (c) the second engineer;
- (d) the chief steward;
- (e) the chief integrated rating.

supervisor means the head of a department (however described) or a team leader on a prescribed ship or prescribed unit.

temporary licence has the same meaning as in the *Coastal Trading (Revitalising Australian Shipping) Act 2012*.

workplace means anywhere on board a prescribed ship or prescribed unit:

- (a) where an employee or contractor works; or
- (b) under the control of the operator to which an employee or contractor has access.

4A Declarations that a ship is or is not a prescribed ship

- (1) The Minister may by legislative instrument declare a ship to be a prescribed ship.

Section 4B

- (2) The Minister may by legislative instrument declare a ship not to be a prescribed ship.

4B Declarations that a vessel or structure is or is not a prescribed unit

- (1) The Minister may by legislative instrument declare a vessel or structure to be a prescribed unit.
- (2) The Minister may by legislative instrument declare a vessel or structure not to be a prescribed unit.

Division 3—Miscellaneous preliminary provisions

5 Extent of Act

This Act extends to all places outside Australia, including all the external Territories.

6 Application of Act

- (1) This Act applies in relation to a prescribed ship or prescribed unit that is engaged in trade or commerce:
 - (a) between Australia and places outside Australia; or
 - (aa) between 2 places outside Australia; or
 - (b) between the States; or
 - (c) within a Territory, between a State and a Territory or between 2 Territories.
- (2) Without limiting the operation of subsection (1), this Act applies to:
 - (a) the operator of a prescribed ship or prescribed unit described in subsection (1); and
 - (b) employees employed on a prescribed ship or prescribed unit described in subsection (1); and
 - (c) contractors and other persons working on a prescribed ship or prescribed unit described in subsection (1); and
 - (d) manufacturers, suppliers and importers of plant used, or substances used or handled, on a prescribed ship or prescribed unit described in subsection (1).
- (3) This Act also applies in relation to:
 - (a) a vessel that would be an off-shore industry vessel within the meaning of the *Navigation Act 1912* if that Act had not been repealed and either:
 - (i) was, immediately before the repeal of that Act, covered by a declaration in force under subsection 8A(2) of that Act; or

- (ii) is covered by a declaration in force under subsection (3AB) of this section; or
- (b) a ship that would be a trading ship within the meaning of the *Navigation Act 1912* if that Act had not been repealed and either:
 - (i) was, immediately before the repeal of that Act, covered by a declaration in force under subsection 8AA(2) of that Act; or
 - (ii) is covered by a declaration in force under subsection (3AB) of this section.
- (3AA) However, this Act does not apply because of subsection (3) to a vessel or ship that is covered by a declaration in force under subsection (3AC).
- (3AB) The Authority may declare in writing that this Act applies to a vessel or ship that would be an off-shore industry vessel, or a trading ship, within the meaning of the *Navigation Act 1912* if that Act had not been repealed.
- (3AC) The Authority may declare in writing that this Act does not apply because of subsection (3) to a vessel or ship that would be an off-shore industry vessel, or a trading ship, within the meaning of the *Navigation Act 1912* if that Act had not been repealed.
- (3AD) A declaration made under subsection (3AB) or (3AC) is not a legislative instrument.
- (3A) This Act also applies to:
 - (a) a vessel that is used to engage in coastal trading under a general licence; and
 - (b) a vessel that is used to engage in coastal trading under a temporary licence if the vessel is registered in the Australian International Shipping Register; and
 - (c) a vessel that is used to engage in coastal trading under an emergency licence if the vessel is registered in the Australian General Shipping Register or the Australian International Shipping Register.

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- (4) Without limiting the operation of subsection (3) or (3A), this Act applies to:
 - (a) the operator of a vessel or ship described in subsection (3) or (3A); and
 - (b) employees employed on a vessel or ship described in subsection (3) or (3A); and
 - (c) contractors and other persons working on a vessel or ship described in subsection (3) or (3A); and
 - (d) manufacturers, suppliers and importers of plant used, or substances used or handled on, a vessel or ship described in subsection (3) or (3A).
- (5) Without prejudice to its effect apart from this subsection, this Act also has effect as provided by subsections (6), (7) and (8).
- (6) This Act has, by force of this subsection, the effect it would have if:
 - (a) a reference to an operator were limited to a reference to a trading corporation formed within the limits of the Commonwealth; and
 - (b) a reference to an employee were limited to a reference to an employee of a trading corporation formed within the limits of the Commonwealth; and
 - (c) a reference to a contractor were limited to a reference to a contractor working for a trading corporation formed within the limits of the Commonwealth; and
 - (d) a reference to a manufacturer were limited to a reference to a manufacturer that is a trading corporation formed within the limits of the Commonwealth; and
 - (e) a reference to a supplier were limited to a reference to a supplier that is a trading corporation formed within the limits of the Commonwealth; and
 - (f) a reference to a person in sections 22, 23 and 24 were limited to a reference to a person working for a trading corporation formed within the limits of the Commonwealth.

- (7) This Act has, by force of this subsection, the effect it would have if:
- (a) a reference to an operator were limited to a reference to a financial corporation formed within the limits of the Commonwealth; and
 - (b) a reference to an employee were limited to a reference to an employee of a financial corporation formed within the limits of the Commonwealth; and
 - (c) a reference to a contractor were limited to a reference to a contractor working for a financial corporation formed within the limits of the Commonwealth; and
 - (d) a reference to a person in sections 22, 23 and 24 were limited to a reference to a person working for a financial corporation formed within the limits of the Commonwealth.
- (8) This Act has, by force of this subsection, the effect it would have if:
- (a) a reference to an operator were limited to a reference to a foreign corporation; and
 - (b) a reference to an employee were limited to a reference to an employee of a foreign corporation; and
 - (c) a reference to a contractor were limited to a reference to a contractor working for a foreign corporation; and
 - (d) a reference to a manufacturer were limited to a reference to a manufacturer that is a foreign corporation; and
 - (e) a reference to a supplier were limited to a reference to a supplier that is a foreign corporation; and
 - (f) a reference to a person in sections 22, 23 and 24 were limited to a reference to a person working for a foreign corporation.
- (9) This Act does not apply with respect to:
- (a) State banking that does not extend beyond the limits of the State concerned; or
 - (b) State insurance that does not so extend.

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7 This Act not to affect the *Navigation Act 2012*

This Act does not affect the operation of the *Navigation Act 2012*.

8 Application of Act to prescribed ships or prescribed units controlled by contractors

- (1) Despite anything in this Act, if a prescribed ship or prescribed unit is controlled by a contractor for construction or repair purposes:
 - (a) this Act (other than sections 22, 23, 24, 25 and 26) does not apply to that ship or unit while it is so controlled; and
 - (b) this Act (other than sections 22, 23, 24, 25 and 26) does not apply to work performed by contractors on that ship or unit while it is so controlled; and
 - (c) this Act, other than Parts 1 and 2 and section 120, applies to work performed by employees on that ship or unit 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.
- (2) A prescribed ship or prescribed unit is taken to be controlled by a contractor if, and only if, the operator has given control of the ship or unit to the contractor.
- (3) Despite anything in this Act, a contractor does not become an operator because the contractor is given control of a prescribed ship or prescribed unit for construction or repair purposes.

8A Application of *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

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

Division 4—Additional functions conferred on Seafarers Safety, Rehabilitation and Compensation Authority and Ministerial directions

9 Functions conferred on the Authority

The following additional functions are conferred on the Authority:

- (a) to ensure, in accordance with this Act and the regulations, that the obligations imposed by or under this Act and the regulations are complied with;
- (b) to advise operators, employees or contractors, either on its own initiative or on being asked, on occupational health and safety matters;
- (c) to collect, interpret and report information relating to occupational health and safety;
- (d) to formulate policies and strategies relating to the occupational health and safety of employees;
- (e) to accredit occupational health and safety training courses for the purposes of section 47;
- (f) to liaise with other bodies concerned with occupational health and safety;
- (g) 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 subsection 109(1).

10 Directions by Minister

- (1) The Minister may, in writing, give directions to the Authority concerning the performance of its functions, and the exercise of its powers, under this Act.
- (2) The Authority must comply with the directions.

Part 2—Occupational Health and Safety

Division 1—General duties relating to occupational health and safety

11 Duties of operators in relation to their employees

- (1) An operator of a prescribed ship or prescribed unit must take all reasonable steps to protect the health and safety at work of employees.

Penalty: 1,000 penalty units.
- (2) In particular but without limiting subsection (1), an operator must take all reasonable steps to comply with the rest of this section. An operator who fails to take those steps contravenes subsection (1).
- (3) An operator must provide and maintain a working environment (including plant and systems of work) that:
 - (a) is safe for employees and without risk to their health; and
 - (b) provides adequate facilities for their welfare at work.
- (4) An operator must, in relation to any workplace under the operator's control:
 - (a) ensure the workplace is safe for employees and without risk to their health; and
 - (b) provide and maintain a means of access to and from the workplace that is safe for employees and without risk to their health.
- (5) An operator must ensure the safety at work of employees (including the absence of risks at work to the health of employees), in connection with the use, handling, storage or transport of plant or substances.

- (6) An operator must give employees the information, instruction, training and supervision necessary to enable them to perform their work in a way that is safe and without risk to their health. An operator may provide information, instruction and training on a prescribed ship or prescribed unit.
- (7) An operator must:
 - (a) take appropriate action to monitor employees' health and safety at work, and the conditions of the workplaces under the operator's control; and
 - (b) maintain appropriate information and records relating to employees' health and safety; and
 - (c) provide appropriate medical and first aid services for employees.

12 Consultative processes for developing health and safety policy

- (1) An operator of a prescribed ship or prescribed unit must take all reasonable steps to develop a policy relating to the occupational health and safety of employees in accordance with this section.

Penalty: 1,000 penalty units.
- (2) The policy must be developed in consultation with any involved unions in relation to the employees, and with such other persons as the operator considers appropriate.
- (3) The policy must:
 - (a) enable the operator and the employees to cooperate effectively in promoting and developing measures to ensure the employees' health, safety and welfare at work; and
 - (b) provide adequate mechanisms for reviewing the effectiveness of the measures.
- (4) The policy must:
 - (a) provide appropriate mechanisms for continuing consultations between the operator, the involved unions and the employees on occupational health and safety matters; and

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- (b) provide for such other matters (if any) as are agreed between the operator and the involved unions.

13 Duties of operators in relation to contractors

- (1) The obligations of an operator of a prescribed ship or prescribed unit in respect of employees employed on the ship or unit that are set out in subsections 11(1) to (6) also apply in respect of persons who are contractors on that ship or unit to the extent set out in this section, and not otherwise.
- (2) The obligations apply in relation to matters over which the operator has control.
- (3) The obligations apply in relation to matters:
 - (a) over which the operator would, in the circumstances, usually be expected to have had control; and
 - (b) over which the operator would have had control apart from an express provision to the contrary in an agreement made by the operator with such a contractor.

Penalty: 1,000 penalty units.

- (4) For the purposes of an offence against this section, strict liability applies to the physical element, that the obligations set out in subsections 11(1) to (6) apply as set out in subsection (1) of this section.

14 Duties of operators in relation to third parties

An operator of a prescribed ship or prescribed unit must take all reasonable steps to ensure that persons, other than employees or contractors, at or near a workplace under the operator's control are not exposed to risk to their health or safety arising from the conduct of the operator's undertaking.

Penalty: 1,000 penalty units.

15 Duties of manufacturers in relation to plant

- (1) This section applies to a manufacturer of plant that the manufacturer ought reasonably to expect will be used by employees at work on a prescribed ship or prescribed unit.
- (2) The manufacturer must take all reasonable steps 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.
- (3) The manufacturer must take all reasonable steps to carry out, or cause to be carried out, the research, testing and examination necessary to:
 - (a) discover; and
 - (b) eliminate or minimise;any risk to the health or safety of employees that may arise from the use of the plant.
- (4) The manufacturer must take all reasonable steps to make available to an operator, in connection with the use of the plant by employees at work, adequate information about:
 - (a) its intended use; and
 - (b) its design and construction; and
 - (c) any conditions necessary to ensure that, when put to its intended use, it will be safe for employees and without risk to their health.

Penalty: 200 penalty units.

16 Duties of manufacturers in relation to substances

- (1) This section applies to a manufacturer of a substance that the manufacturer ought reasonably to expect will be used by employees at work on a prescribed ship or prescribed unit.
- (2) The manufacturer must take all reasonable steps to ensure that the substance is so manufactured as to be, when properly used, safe for employees and without risk to their health.

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- (3) The manufacturer must take all reasonable steps to carry out, or cause to be carried out, the research, testing and examination necessary to:
 - (a) discover; and
 - (b) eliminate or minimise;any risk to the health or safety of employees that may arise from the use of the substance.
- (4) The manufacturer must take all reasonable steps to make available to an operator, in connection with the use of the substance by employees at work, adequate information about:
 - (a) its intended use; and
 - (b) details of its composition; and
 - (c) any conditions necessary to ensure that, when put to its intended use, it will be safe for employees and without risk to their health; and
 - (d) the first aid and medical procedures that should be followed if the substance causes injury.

Penalty: 200 penalty units.

17 Importers of plant and substances

If:

- (a) plant or a substance is imported into Australia by a person who is not its manufacturer; 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 is, for the purposes of sections 15 and 16, taken to be the manufacturer of the plant or substance.

**18 Sections 15, 16 and 17 not to affect the operation of the
Competition and Consumer Act 2010 or certain other laws**

Sections 15, 16 and 17 do not affect the operation of the *Competition and Consumer Act 2010*, or of any other law of the Commonwealth or a State or Territory that imposes an obligation

on a manufacturer in respect 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) This section applies to a supplier of any plant or substance that the supplier ought reasonably to expect will be used by employees at work on a prescribed ship or prescribed unit.
- (2) The supplier must take all reasonable steps 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.
- (3) The supplier must take all reasonable steps to carry out, or cause to be carried out, the research, testing and examination necessary to:
 - (a) discover; and
 - (b) eliminate or minimise;any risk to the health or safety of employees that may arise from the condition of the plant or substance.
- (4) The supplier must take all reasonable steps to make available to an operator, in connection with the use of the plant or substance by employees at work, adequate information about:
 - (a) the condition of the plant or substance at the time of supply; and
 - (b) 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
 - (c) the steps that need to be taken in order to eliminate such risk; and
 - (d) in the case of a substance—the first aid and medical procedures that should be followed if the condition of the substance causes injury.

Penalty: 200 penalty units.

Section 20

20 Financiers not to be treated as suppliers

- (1) If a person (the *financier*) supplies any plant or substance to an operator under a financing arrangement for the acquisition of the plant or substance from a third person, the reference in section 19 to the supplier is taken to be a reference to the third person and not to the financier.
- (2) A person supplies plant or a substance to an operator under a financing arrangement for the acquisition of the plant or substance from a third person if:
 - (a) the financier carries on the business of financing the acquisition or the use of goods by other persons; and
 - (b) the financier 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 operator from the third person, or its provision to the operator by the third person; and
 - (c) the financier 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 to that operator;the reference in section 19 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 financier.

21 Neither section 19 nor 20 affect the operation of the *Competition and Consumer Act 2010* or certain other laws

Neither section 19 nor 20 affect the operation of the *Competition and Consumer Act 2010*, or of any other law of the Commonwealth or a State or 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.

22 Duties of persons erecting or installing plant in a workplace

A person who erects or installs any plant in a workplace must take all reasonable steps to ensure that the plant is not erected or

installed in such a way that it is unsafe for employees, contractors or other persons who use the plant or constitutes a risk to their health.

Penalty: 200 penalty units.

23 Duties of persons repairing or maintaining plant in a workplace

A person who repairs or maintains any plant in a workplace must take all reasonable steps to ensure that the plant is not repaired or maintained in such a way that it is unsafe for employees, contractors or other persons who use the plant or constitutes a risk to their health.

Penalty: 200 penalty units.

24 Duties of persons constructing, modifying or repairing a structure on a prescribed ship or prescribed unit

A person who constructs, modifies or repairs a structure on a prescribed ship or prescribed unit must take all reasonable steps to ensure the structure is not constructed, modified or repaired in such a way that it is unsafe for employees, contractors or other persons or constitutes a risk to their health.

Penalty: 200 penalty units.

25 Duties of persons engaged in loading or unloading a prescribed ship or prescribed unit

A person who is engaged in loading or unloading a prescribed ship or prescribed unit must take all reasonable steps to ensure that the ship or unit is not loaded or unloaded in such a way that it is unsafe for employees, contractors or other persons or constitutes a risk to their health.

Penalty: 200 penalty units.

Section 26

**26 Sections 22, 23, 24 and 25 not to affect the operation of the
Competition and Consumer Act 2010 or certain other laws**

Sections 22, 23, 24 and 25 do not affect the operation of the *Competition and Consumer Act 2010*, or of any other law of the Commonwealth or a State or Territory that imposes an obligation in respect of the erection or installation of goods or the supply of other services.

27 Duties of employees in relation to occupational health and safety

- (1) An employee must, at all times while at work, take all reasonable steps to comply with the rest of this section. An employee who fails to take those steps contravenes this section.

Penalty: 50 penalty units.

- (2) An employee must ensure that he or she does not create a risk, or increase an existing risk (whether by doing something or failing to do something), to his or her own health or safety or to the health or safety of other persons (whether employees or not) at or near the place where he or she is at work.

- (3) An employee must cooperate with the operator, or with any other person, to the extent necessary to enable the operator or other person to fulfil a duty or obligation imposed on the operator or other person by or under this Act.

- (4) If:

- (a) equipment is supplied to the employee by the operator; and
- (b) the equipment is 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;

the employee must use the equipment, and must use it in accordance with any instructions given by the operator consistent with its safe and proper use.

- (5) The choice or manner of use of equipment may be agreed on between the operator and any relevant involved union or agreed on by a health and safety committee.

28 Reliance on information supplied—plant and substances

- (1) In particular, but without limiting what constitutes taking reasonable steps as required by section 11, 13 or 14 for the purpose of the application of those sections to the use of plant or a substance, an operator on whom an obligation is imposed under section 11, 13 or 14 is taken to have taken such reasonable steps as the relevant section requires if subsection (2) applies.
- (2) This subsection applies if:
 - (a) the operator ensured, so far as 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 the use of the plant or substance in a manner that ensures the health and safety of employees, contractors or other persons who use it; and
 - (b) it was reasonable for the operator to rely on that information.

29 Reliance on information supplied—erection or installation of plant

- (1) In particular, but without limiting what constitutes taking reasonable steps as required by section 22 for the purpose of the application of that section to the erection or installation of plant in a workplace, a person on whom an obligation is imposed under section 22 is taken to have taken such reasonable steps as the section requires, if subsection (2) applies.
- (2) This subsection applies if:
 - (a) the person ensured, so far as 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

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that ensures the health and safety of employees, contractors or other persons who use the plant; and

- (b) it was reasonable for the person to rely on that information.

30 Reliance on information supplied—repair or maintenance of plant

- (1) In particular, but without limiting what constitutes taking reasonable steps as required by section 23 for the purpose of the application of that section to the repair or maintenance of plant in a workplace, a person on whom an obligation is imposed under section 23 is taken to have taken such reasonable steps as that section requires if subsection (2) applies.
- (2) This subsection applies if:
- (a) the person ensured, so far as practicable, that the repair or maintenance of the plant was in accordance with information supplied by the manufacturer or supplier of the plant relating to the repair or maintenance of the plant in a manner that ensures the health and safety of employees, contractors or other persons who use the plant; and
- (b) it was reasonable for the person to rely on that information.

31 Reliance on information supplied—construction, modification or repair of structure

- (1) In particular, but without limiting what constitutes taking reasonable steps as required by section 24, for the purpose of the application of that section to the construction, modification or repair of a structure on a prescribed ship or prescribed unit, a person on whom an obligation is imposed under section 24 is taken to have taken such reasonable steps if subsection (2) applies.
- (2) This subsection applies if:
- (a) the person ensured, so far as practicable, that the construction, modification or repair of the structure was in accordance with information supplied by the manufacturer or the supplier of the materials or parts used in the construction,

- modification or repair of the structure in a manner that ensures the health and safety of employees, contractors or other persons on the prescribed ship or prescribed unit; and
- (b) it was reasonable for the person to rely on that information.

32 Reliance on results of research

- (1) In particular, but without limiting what constitutes taking reasonable steps as required by section 15, 16 or 19, for the purpose of the application of those sections to carrying out research, testing and examining plant or a substance, a person on whom the obligation is imposed under section 15, 16 or 19 is taken to have taken such reasonable steps as that section requires, if subsection (2) applies.
- (2) This subsection applies if:
- (a) the research, testing or examination has already been carried out by or on behalf of someone else; 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

33 Regulations relating to occupational health and safety

- (1) Subject to this Act, the regulations may make provision relating to any matter affecting, or likely to affect, the occupational health and safety of:
 - (a) employees employed on a prescribed ship or prescribed unit;
or
 - (b) contractors working on a prescribed ship or prescribed unit;
or
 - (c) other persons on or near a prescribed ship or prescribed unit.
- (2) In particular, but without limiting subsection (1), those regulations may make provision for any or all of the following:
 - (a) prohibiting or restricting the performance of all work or specified work at a workplace or by employees or contractors at work;
 - (b) prohibiting or restricting the use of all plant or specified plant at a workplace or by employees or contractors at work;
 - (c) prohibiting or restricting the carrying out of all processes or procedures, or a specified process or procedure, at a workplace or by employees or contractors at work;
 - (d) prohibiting or restricting the storage or use of all substances or specified substances at a workplace or by employees or contractors at work;
 - (e) specifying the form in which information required to be made available to an operator under paragraph 15(4), 16(4) or 19(4) is to be so made available;
 - (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;

- (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;
- (h) regulating the maintenance and testing of plant used at a workplace or by employees or contractors at work;
- (i) regulating the labelling or marking of substances used at a workplace or by employees or contractors at work;
- (j) regulating the transport of specified plant or specified substances for use at a workplace or by employees or contractors at work;
- (k) 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;
- (l) requiring specified action to avoid accidents or dangerous occurrences;
- (m) providing for, or prohibiting, specified action in the event of accidents or dangerous occurrences;
- (n) providing for the employment at workplaces of persons to perform specified duties relating to the maintenance of occupational health and safety at workplaces;
- (o) regulating the provision and use of protective clothing and equipment, safety equipment and rescue equipment, at a workplace or by employees or contractors at work;
- (p) providing for monitoring the health of employees and the conditions at workplaces;
- (q) requiring operators to keep records of matters related to the occupational health and safety of employees;
- (r) providing for the provision of first aid equipment and facilities at workplaces.

Part 3—Workplace Arrangements

Division 1—Designated work groups

34 Request to establish or vary designated work groups

A request to an operator to enter into consultations to establish designated work groups in respect of employees of the operator employed on a prescribed ship or prescribed unit, or to vary designated work groups that have already been established, may be made by:

- (a) if there are involved unions in relation to employees of the operator—any such involved union; or
- (b) if there is no involved union in relation to any employee of the operator—any such employee.

35 Operator to enter into consultations to establish or vary designated work groups

The operator must, within 14 days after receiving a request under section 34, enter into such consultations with:

- (a) if there are involved unions in relation to employees of the operator—each such involved union; or
- (b) if there is no involved union in relation to any employee of the operator—the employee who made the request.

36 Variation of designated work groups

If the operator thinks that designated work groups should be varied, the operator may, at any time, enter into consultations about the variation of the designated work groups with:

- (a) if there are involved unions in relation to employees of the operator—each such involved union; or

- (b) if there is no involved union in relation to any employee of the operator—the health and safety representative for each designated work group proposed to be varied.

37 Reference of disagreement to reviewing authority

- (1) If, in the course of consultations under section 35 or 36, there is a disagreement between any of the parties to the consultation about 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.
- (2) If a disagreement is referred to the reviewing authority under subsection (1), the parties to the disagreement must complete the consultation in accordance with the resolution of that matter by the reviewing authority.

38 Operator to establish designated work groups in accordance with consultations

Within 14 days after the completion of consultations under section 35 about the establishment of designated work groups, the operator must, by notifying the employees, establish the designated work groups in accordance with the outcome of the consultations.

39 Operator to vary designated work groups in accordance with consultations

Within 14 days after the completion of consultations under section 35 or 36 about the variation of designated work groups that have already been established, the operator must, if it has been determined that the variation of some or all of those designated work groups is justified, by notifying the employees who are affected by the variation, vary the designated work groups in accordance with the outcome of the consultations.

Section 40

40 Consultation procedures

- (1) Consultations about 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 in the group.
- (2) The parties to the consultations must have regard, in particular, to:
 - (a) the number of the employees; and
 - (b) the nature of each type of work performed by the employees; and
 - (c) the number and grouping of the employees who perform the same or similar types of work; and
 - (d) the workplaces, and the areas within the workplaces, where each type of work is performed; and
 - (e) the nature of any risks to health and safety at the workplaces; and
 - (f) any extended hours or watchkeeping arrangements on the prescribed ship or prescribed unit.
- (3) The designated work groups must be established or varied in such a way that, so far as practicable, each of the employees is in a designated work group.
- (4) All the employees on a prescribed ship or prescribed unit may be in one designated work group.

Division 2—Health and safety representatives

41 Selection of health and safety representatives

- (1) One health and safety representative may be selected for each designated work group.
- (2) A person cannot be selected as the health and safety representative for a designated work group unless the person is an employee included in the group.
- (3) A person is taken to have been selected as the health and safety representative for a designated work group if:
 - (a) all the employees in the group unanimously agree to the selection; or
 - (b) the person is elected as the health and safety representative for the group.

42 Conduct of elections of health and safety representatives

An election of a health and safety representative for the designated work group may be conducted:

- (a) if there is only one involved union in relation to the group—by that involved union; or
- (b) if there is more than one involved union and all the involved unions are in agreement that a specified one of those unions should conduct the election—by that specified union; or
- (c) if there is no involved union in relation to the group—by a person authorised by the Authority to conduct elections under this section.

43 Candidates for election as health and safety representatives

An employee in the designated work group may be a candidate in the election if, and only if:

- (a) the employee is not disqualified under section 72; and

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- (b) if an involved union in relation to the group is conducting the election—the employee is nominated by an involved union in relation to the group.

44 Right to vote in health and safety representative election

- (1) All the employees in the designated work group may vote in the election under section 42.
- (2) If there is only one candidate for the election, that person is taken to have been elected.
- (3) If a person is selected as the health and safety representative for a designated work group:
 - (a) if the person is selected by agreement in accordance with paragraph 41(3)(a)—the person; and
 - (b) if the person is selected by election in accordance with paragraph 41(3)(b)—the involved union or other person authorised under section 42 to conduct the election;must, as soon as practicable after the person has been so selected, inform the person in command of the name of the person so selected.
- (4) As soon as practicable after being so informed, the person in command must cause a notice of the selection to be displayed in a prominent place at such workplaces as will allow all the employees in the group to be notified of the selection.

45 Person in command to maintain list of health and safety representatives

The person in command must prepare and keep up-to-date a list of all the health and safety representatives for designated work groups, and must ensure that the list is at all reasonable times available for inspection by:

- (a) the employees; and
- (b) involved unions in relation to the designated work groups; and

- (c) inspectors.

46 Term of office

- (1) Subject to this Part, a health and safety representative for a designated work group holds office:
 - (a) for the period beginning on the day on which the person is selected as the representative and ending on the day on which the person stops serving on the prescribed ship or prescribed unit, as the case may be; or
 - (b) if agreed in consultations held under section 35 or 36 by the parties to those consultations—for a succession of such periods.
- (2) The maximum period that a person can hold office as a health and safety representative for a designated work group is 2 years.
- (3) A person may be re-selected as the health and safety representative for a designated work group.

47 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 Authority for the purposes of this section. A course may be provided on a prescribed ship or prescribed unit.
- (2) The operator must permit the health and safety representative to take such time off work, without loss of remuneration or other entitlements, as is necessary to undertake the training.

48 Powers of health and safety representatives in respect of a workplace

- (1) A health and safety representative for a designated work group may, in respect of a workplace at which work is performed by some or all of the employees in the group, do all or any of the following:

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- (a) inspect the whole or any part of the workplace if:
 - (i) 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 such an occurrence; or
 - (ii) the representative has given the operator reasonable notice of the inspection;
 - (b) ask an inspector or the Inspectorate to conduct an investigation at the workplace;
 - (c) accompany an inspector during any investigation at the workplace by the inspector (whether or not the investigation is being conducted as a result of a request made by the representative);
 - (d) if there is no health and safety committee on the prescribed ship or prescribed unit—represent the employees in the group in consultations with the person in command about the development, implementation and review of measures to ensure the health and safety at work of the employees in the group;
 - (e) if a health and safety committee has been established on the prescribed ship or prescribed unit—examine any of the records of that committee.
- (2) If the health and safety representative asks for an investigation of the workplace under paragraph (1)(b), the representative must notify the person in command of the request.

49 Power of health and safety representatives to investigate complaints

A health and safety representative for a designated work group may investigate complaints made by any of the employees in the group to the representative about the health and safety of any of the employees at work.

50 Power of health and safety representatives to be present at certain interviews

A health and safety representative for a designated work group may, with the consent of the employee concerned, be present at any interview, about health and safety at work, between an employee in the group and:

- (a) an inspector; or
- (b) the operator, the person in command or any other person representing the operator.

51 Power of health and safety representatives to obtain access to information

A health and safety representative for a designated work group may obtain access to:

- (a) any information under the operator's control relating to risks to the health and safety of any employees:
 - (i) at any workplace under the operator's control; or
 - (ii) arising from the conduct by the operator of an undertaking, or from plant or substances used for the purposes of the undertaking; and
- (b) subject to section 55, any information under the operator's control relating to the health and safety of any of the employees.

52 Power of health and safety representatives to issue provisional improvement notices

A health and safety representative for a designated work group may issue provisional improvement notices in accordance with section 58.

Section 53

53 Powers of health and safety representatives to be exercised for the purposes of promoting or ensuring health and safety

The powers of a health and safety representative under sections 48 to 52 (inclusive) may only be exercised for the purposes of promoting and ensuring the health and safety at work for the employees in the designated work group.

54 Consultant to health and safety representative

- (1) A health and safety representative for a designated work group may, in the exercise of his or her powers, be assisted by a consultant.
- (2) A health and safety representative must not:
 - (a) be assisted by a consultant at a workplace; or
 - (b) give to a consultant information which has been given to the health and safety representative by an operator under section 51;unless the operator has, in writing, agreed to the giving of that assistance at that workplace or the giving of that information, as the case may be.
- (3) The operator does not, because of the agreement under subsection (2) to the provision of assistance by a consultant, become liable for any remuneration or other expenses incurred in connection with the consultant's activities.
- (4) If a health and safety representative is being assisted by a consultant, the consultant may be present with the representative at any interview under section 50, about health and safety at work, between an employee in the group and:
 - (a) an inspector; or
 - (b) the operator, the person in command or any other person representing the operator;if, and only if, the employee consents to the presence of the consultant.

55 Access to confidential information

The health and safety representative for a designated work group must not, or, if the health and safety representative is assisted by a consultant, the health and safety representative and the consultant must not, under paragraph 51(b), have access:

- (a) to information in respect of which the operator may claim, and does claim, legal professional privilege; or
- (b) to information of a confidential medical nature relating to a person who is or was an employee unless:
 - (i) the person has given to the operator a written authority allowing 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.

56 Liability of health and safety representative

This Act does not:

- (a) impose an obligation on a person to exercise any power conferred on the person because the person is a health and safety representative for a designated work group; or
- (b) render a person liable in civil proceedings because of:
 - (i) a failure to exercise such a power; or
 - (ii) the way such a power was exercised.

Division 3—Provisional improvement notices

57 Consultations in relation to rectifying contraventions or preventing contraventions of this Act

- (1) If the health and safety representative for a designated work group thinks, on reasonable grounds, that a person:
 - (a) is contravening a provision of this Act or the regulations; or
 - (b) has contravened a provision of this Act or the regulations and is likely to contravene that provision again;and the contravention affects or may affect one or more employees included in the group, the representative must consult with the person supervising the work performed by the employee or employees in an attempt to reach agreement on rectifying the contravention or preventing the likely contravention.
- (2) If the representative and the supervisor fail to reach agreement, the representative must consult with the person in command in an attempt to reach agreement on rectifying the contravention or preventing the likely contravention.

58 Issuing of provisional improvement notice

- (1) If the health and safety representative for a designated work group thinks agreement under subsection 57(2) is not reached within a reasonable time, the health and safety representative may issue a provisional improvement notice to the person in command.
- (2) The notice must:
 - (a) specify the contravention of this Act or the regulations that the health and safety representative thinks is occurring or is likely to occur; and
 - (b) set out the reasons why the health and safety representative thinks the contravention of this Act or the regulations is occurring or is likely to occur; and

- (c) specify a period of not less than 7 days beginning on the day after the notice is issued, being a period that the representative thinks is reasonable, within which the person in command is to take action necessary to prevent any further contravention or to prevent the likely contravention, as the case may be.
- (3) The notice may specify action that the person in command is to take during the period specified in the notice.
- (4) If the health and safety representative thinks 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.
- (5) If the person in command receives a notice under subsection (1), the person in command must give a copy of the notice to:
 - (a) if the notice relates to any workplace, plant, substance or thing that is owned by a person other than the operator—that owner; and
 - (b) if the notice relates to a contravention of this Act or the regulations by a contractor or an employee of a contractor that has occurred or is likely to occur—that contractor.

59 Effect of provisional improvement notice

- (1) Within 7 days after a provisional improvement notice is issued under section 58, a person to whom a copy of the notice has been issued under subsection 58(1) or a person to whom a copy of a notice has been given under subsection 58(5) may ask the Inspectorate or an inspector to conduct an investigation of the matter.
- (2) On the request being made, the operation of the notice is suspended pending the determination of the matter by an inspector.
- (3) As soon as possible after a request is made, an investigation must be conducted of the work that is the subject of the disagreement, and the inspector conducting the investigation must:

Section 60

- (a) confirm, vary or cancel the notice and notify the person in command and any person to whom a copy of the notice has been given under subsection 58(5) accordingly; and
 - (b) make such decisions, and exercise such powers, under Part 4, as the inspector thinks necessary in relation to the work.
- (4) If the inspector varies the notice, the notice as so varied has effect, and, except in so far as it imposes additional obligations on any person notified under paragraph (3)(a), is taken to have always had effect, accordingly.

60 Employees to be notified of issuing of provisional improvement notice

- (1) If the person in command receives a notice under subsection 58(1), the person must:
 - (a) notify each employee who is affected by the notice of the fact of the issue of the notice; and
 - (b) until the notice stops having effect, cause a copy of the notice to be displayed in a prominent place at or near each workplace at which the work that is the subject of the notice is being performed.
- (2) The notice stops having effect if:
 - (a) it is cancelled by an inspector or by the health and safety representative who issued the notice; or
 - (b) the person in command or a person given a copy of the notice under subsection 58(5):
 - (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 contravention, or likely contravention, concerned.

61 Person in command's obligations

The person in command must:

- (a) ensure that, to the extent that the provisional improvement notice received under subsection 58(1) relates to any matter over which the person has control, the notice is complied with; and
- (b) take reasonable steps to inform the health and safety representative who issued the notice of the action taken to comply with the notice.

62 Operation of section 98 for the purposes of section 100

For the purposes of section 100, if the inspector under subsection 59(3) confirms or varies the provisional improvement notice given under section 58, the inspector is taken to have decided, under section 98, to issue an improvement notice in those terms.

63 Duty of operators to consult with health and safety representatives on implementation of changes at workplace

The operator must, if asked to do so by the health and safety representative for a designated work group, consult with the representative on the implementation of changes at any workplace at which some or all of the employees of the group perform work for the operator, being changes that may affect the health and safety at work of the employees.

64 Duties of operators to allow health and safety representatives access to a workplace and to consult with representatives on workplace health and safety measures

The operator must, in respect of a workplace:

- (a) allow the health and safety representative for a designated work group to make such inspection of the workplace as the representative may make in accordance with paragraph 48(1)(a), and to accompany an inspector during any investigation at the workplace by the inspector; and

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- (b) if there is no health and safety committee in respect of the employees at the workplace—on being asked to do so by the representative, consult with the representative about the development, implementation and review of measures to ensure the health and safety at work of those employees.

65 Duty of operators to allow health and safety representatives to be present at certain interviews

The operator must allow the health and safety representative for a designated work group to be present at any interview at which the representative may be present under section 50.

66 Duty of operators to provide health and safety representatives access to certain information

The operator must, subject to sections 69 and 70, provide to the health and safety representative for a designated work group access to any information to which the representative may obtain access under section 51 and to which access has been requested.

67 Duty of operators to allow health and safety representatives to take time off

The operator must allow the health and safety representative for a designated work group 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.

68 Duty of operators to provide health and safety representatives access to certain facilities

The operator must provide the health and safety representative for a designated work group with access to such facilities as are:

- (a) prescribed for the purposes of this section; or
- (b) necessary for the purposes of exercising the powers of a health and safety representative.

69 Access to confidential medical information

An operator must not permit a health and safety representative for a designated work group to have access to information of a confidential medical nature under the control of the operator, being information relating to a person who is or was an employee, unless:

- (a) the person has given to the operator 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.

70 Access to information in relation to which an operator claims legal professional privilege

An operator does not have to give a health and safety representative for a designated work group access to any information in respect of which the operator may claim, and does claim, legal professional privilege.

71 Resignation etc. of health and safety representatives

- (1) A person must stop being 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 stops being an employee included in the designated work group; or
 - (c) the person's term of office ends without the person having been selected, under section 41, to be the health and safety representative for the designated work group for a further term; or
 - (d) the person is disqualified under section 72.
- (2) A person may resign as the health and safety representative for a designated work group:
 - (a) if the person was last selected as the health and safety representative in an election conducted by an involved union in relation to the group—by written notice given to:

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- (i) the involved union that nominated the person as a candidate in the election; and
 - (ii) the person in command; and
 - (b) in any other case—by written notice given to the person in command.
- (3) If the person in command receives a notice of resignation under paragraph (2)(b), the person in command must cause a copy of the notice to be displayed in a prominent place at the workplace.

72 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 Authority by the operator, or by an involved union in relation 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 48(1) or any other provision of this Act was taken:
 - (i) with the intention of causing harm to the operator or to an undertaking of the operator; or
 - (ii) unreasonably, capriciously or not for the purpose for which the power was conferred on the representative;
 - (b) that the representative 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 operator.
- (2) If, on an application by an operator or an involved union under subsection (1), the Authority is satisfied that the health and safety representative has acted in a manner referred to in paragraph (1)(a) or (b), the Authority may, after having regard to:
- (a) the harm (if any) that was caused to the operator or to an undertaking of the operator as a result of the action of the representative; and

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- (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 Authority 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.

Division 4—Health and safety committees

73 Health and safety committees

- (1) A health and safety committee must be established in respect of employees on a prescribed ship or a prescribed unit if:
 - (a) the employees are included in one or more designated work groups; and
 - (b) the operator is requested to establish the committee by:
 - (i) the health and safety representative for the designated work group or for one of the designated work groups; or
 - (ii) an involved union in relation to such a group.
- (2) The health and safety committee is to consist of:
 - (a) the person in command and the health and safety representative for each designated work group; or
 - (b) the person in command and such other persons as agreed between the operator and the involved unions.
- (3) The agreement referred to in paragraph (2)(b) may:
 - (a) specify the persons who are members who represent management; and
 - (b) provide for the way in which persons who are to be members representing interests of employees are to be chosen.
- (4) A health and safety committee must hold meetings at least once every 3 months.
- (5) The procedure at meetings of a health and safety committee must, except to the extent provided for by the regulations, be the procedure agreed on by the committee.
- (6) A health and safety committee must cause minutes of its meetings to be kept, and must retain those minutes for a period of not less than 3 years.

- (7) The person in command is to keep the minutes in his or her custody and is to cause them to be, at all times, available for inspection.
- (8) Minutes taken at a meeting of a health and safety committee must be tabled at the next meeting of the relevant shipboard management committee (if any) that occurs after the health and safety committee meeting.
- (9) This section does not prevent an operator from establishing, in consultation with registered unions or any other persons, committees concerned with occupational health and safety in relation to undertakings carried on by the operator.

74 Functions of health and safety committees

A health and safety committee has the following functions:

- (a) to assist the operator:
 - (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 employees;
- (b) to facilitate cooperation between the operator and employees in relation to occupational health and safety matters;
- (c) to assist the operator to disseminate among employees information relating to health and safety at work;
- (d) such functions as are prescribed;
- (e) such other functions as are agreed upon between the operator and the health and safety committee.

75 Powers of health and safety committees

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.

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76 Liability of health and safety committee members

This Act does not:

- (a) impose 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) render 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.

77 Duties of operators in relation to health and safety committees

If there is a health and safety committee, the operator must:

- (a) subject to sections 78 and 79, make available to the committee any information possessed by the operator relating to risks to the health and safety of employees:
 - (i) at any workplace under the operator's control; or
 - (ii) arising from the conduct by the operator 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 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.

78 Access to confidential medical information

An operator 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, unless:

- (a) the person has given to the operator an authority allowing 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 person's identity to be discovered.

**79 Access to information in relation to which an operator claims
legal professional privilege**

An operator does not have to make available to a health and safety committee any information in respect of which the operator may claim, and does claim, legal professional privilege.

Division 5—Emergency procedures

80 Action by health and safety representatives

- (1) If the 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 stops performing particular work, the representative must:
 - (a) inform a supervisor; or
 - (b) if no supervisor can be contacted immediately—direct the employee or employees to stop, in a safe manner, performing the work, and as soon as practicable inform a supervisor that the direction has been given.
- (2) If a supervisor is informed under paragraph (1)(a) of a threat to the health or 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 stop, in a safe manner, performing the work.
- (3) If the health and safety representative is unable to agree with the supervisor whom the representative has informed under paragraph (1)(a) of a threat to the health or safety of persons performing work:
 - (a) that the threat to health or safety has been removed; or
 - (b) that the order to cease work under paragraph (1)(b) was justified;the representative must inform the person in command of the threat to health or safety.
- (4) If the representative and the person in command are unable to agree:
 - (a) that the threat to health or safety has been removed; or

- (b) that the order to cease work under paragraph (1)(b) was justified;
the representative or the person in command may ask the Inspectorate or an inspector to conduct an investigation of the work that is the subject of the disagreement.
- (5) As soon as possible after a request is made, an investigation must be conducted of the work that is the subject of the disagreement, and the inspector conducting the investigation must make such decisions, and exercise such powers, under Part 4 as the inspector considers necessary in relation to the work.

81 Directions to perform other work

If an employee has stopped performing work, in accordance with a direction by a health and safety representative under paragraph 80(1)(b), not being a stoppage of work that continues after:

- (a) the health and safety representative has agreed with the supervisor or the person in command that the stoppage of work was not, or is no longer, necessary; or
- (b) an inspector has, under subsection 80(5), made a decision that has the effect that the employee should perform the work;

the person in command 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 and Investigations

Division 1—The Inspectorate

82 Functions of the Inspectorate

The Inspectorate has the following functions:

- (a) to ensure, in accordance with this Act and the regulations, that the obligations imposed by or under this Act or the regulations are complied with;
- (b) to advise operators, employees or contractors, whether of its own motion or on being asked, on occupational health and safety matters affecting such operators, employees or contractors;
- (c) to provide the Authority with such information as is asked for by the Authority.

Division 2—Advice**83 Inspectorate may refer persons seeking advice to experts**

If the Inspectorate has been asked to advise an operator, employee or contractor about an occupational health and safety matter, it may, in the exercise of its function to provide that advice, refer the operator, employee or contractor to a person who has special knowledge or experience relevant to the request.

Division 3—Investigations

84 Appointment of inspectors

The Inspectorate may appoint, in writing, members of the Inspectorate staff who have had occupational health and safety training as inspectors.

85 Identification cards

- (1) The Inspectorate must cause to be issued to each inspector an identity card in a form approved by the Inspectorate.
- (2) An inspector must carry his or her identity card at all times when performing the functions of an inspector.
- (3) If a person issued with an identity card under subsection (1) stops being an inspector, the person must immediately return the identity card to the Inspectorate.

Penalty for a contravention of subsection (3): 1 penalty unit.

- (4) Subsection (3) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

86 Directions by Inspectorate

The Inspectorate may, in writing, give directions specifying the manner in which, and any conditions subject to which, powers conferred on inspectors under this Act are to be exercised. If it does so, the powers of inspectors must be exercised in accordance with those directions.

87 Investigations

- (1) An inspector may, at any time, conduct an investigation:

- (a) to ascertain whether the requirements of, or any requirements properly made under, this Act or the regulations are being complied with; or
 - (b) concerning a contravention or possible contravention of this Act or the regulations; or
 - (c) concerning an accident or dangerous occurrence that has happened in the performing of work.
- (2) The Inspectorate may direct an inspector to conduct an investigation:
 - (a) to ascertain whether the requirements of, or any requirements properly made under, this Act or the regulations are being complied with; or
 - (b) concerning a contravention or possible contravention of this Act or the regulations; or
 - (c) concerning an accident or dangerous occurrence that has happened in the performing of work;and the inspector must, unless the Inspectorate revokes the direction, conduct an investigation accordingly.
- (3) An involved union may ask an inspector or the Inspectorate to conduct an investigation at a workplace at which an employee, who is a member of the union, performs work for an operator.

88 Investigation report

If the inspector gives written advice in relation to an occupational health and safety matter to:

- (a) the person in command; or
- (b) an operator; or
- (c) a contractor; or
- (d) an involved union; or
- (e) a health and safety representative; or

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(f) an employee;
whether in the course of an investigation under this Part into an occupational health and safety matter or on being asked, the inspector must make available a copy of the advice to any interested party.

89 Power of entry etc.

- (1) In conducting an investigation, an inspector may, to the extent that it is reasonably necessary to do so in connection with the investigation:
 - (a) stop and detain a prescribed ship or prescribed unit; and
 - (b) board a prescribed ship or prescribed unit and enter a workplace on the ship or unit at any reasonable time during the day or night; and
 - (c) search the workplace; and
 - (d) inspect, examine, take measurements of or conduct tests concerning the workplace or any plant, substance or thing at the workplace; and
 - (e) take photographs, or make sketches, of the workplace or any plant, substance or thing at the workplace.
- (2) Immediately on boarding the prescribed ship or prescribed unit, an inspector must take reasonable steps to notify the purpose of the entry to:
 - (a) the person in command; and
 - (b) if there is a health and safety representative for a designated work group that includes an employee performing work to which the investigation may relate—that representative;and must, on being asked to do so by the person in command, produce for inspection by that person:
 - (c) the inspector's identity card issued under section 85; and
 - (d) a copy of the Inspectorate's written direction (if any) to conduct the investigation.

- (3) If an inspector who has entered a workplace fails to produce those documents for inspection when asked, the inspector has no right to remain at the workplace.

90 Power to require assistance and information

- (1) An inspector may, to the extent that it is reasonably necessary to do so in connection with the conduct of an investigation, require:
- (a) the operator; or
 - (b) a person representing the operator; 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 inspector reasonable assistance, to answer any questions put by the inspector, and to produce any documents requested by the inspector, reasonably connected with the conduct of the investigation.

- (2) A person must not fail to comply with a requirement under this section.

Penalty: Imprisonment for 6 months.

- (3) Subsection (2) does not apply if the person has a reasonable excuse.

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

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

- (1) In conducting an investigation, an inspector 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

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- (b) take a sample of the substance or thing and remove that sample from the workplace.
- (2) On taking possession of plant, a substance or a thing, or taking a sample of a substance or a thing, the inspector must, by notice in writing, inform:
 - (a) the person in command; and
 - (b) if the plant, substance or thing is owned by a person other than the operator—that person; and
 - (c) if there is a health and safety representative for a designated work group that includes an employee performing 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) The person in command, on being given a notice, 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) If the inspector 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 inspector must:
 - (a) ensure that the inspection, examination, measuring or testing is conducted as soon as practicable; and
 - (b) return it to the workplace as soon as practicable afterwards.
- (5) As soon as practicable after completing any such inspection, examination, measurement or testing, the inspector must give a written statement setting out the results to each person whom the inspector is required to notify under subsection (2).

92 Power to direct that workplace etc. not be disturbed

- (1) If, in conducting an investigation, an inspector thinks that it is reasonably necessary to give a direction 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;
the inspector may direct, by written notice given to the person in command, 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 inspector's opinion, necessary in order to remove the threat or to allow the inspection, examination, measuring or testing to take place.
- (2) The direction must include the reasons for the direction.
- (3) The direction may be renewed by another direction in the same terms.
- (4) If an inspector gives a notice to the person in command, the person must cause a copy of the notice to be displayed in a prominent place at the workplace:
 - (a) that is, or a specified part of which is, to be left undisturbed; or
 - (b) where the plant, substance or thing that is to be left undisturbed is located.
- (5) As soon as practicable after giving the direction, the inspector must take reasonable steps to notify:
 - (a) if the workplace, plant, substance or thing to which the direction relates is owned by a person other than the operator—that person; and
 - (b) if there is a health and safety representative for a designated work group that includes 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 direction and the reasons for giving it.

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- (6) The operator must ensure that the direction is complied with to the extent that it relates to any matter over which the operator has control.

Penalty for a contravention of subsection (6): 250 penalty units.

93 Power to issue prohibition notices

- (1) If, having conducted an investigation, an inspector thinks that it is reasonably necessary to issue a prohibition notice to the operator in order to remove an immediate threat to the health or safety of any person, the inspector must issue such a notice in writing to the person in command.
- (2) The notice must specify the activity in respect of which, the inspector thinks, the threat to health or safety has arisen, and set out the reasons for so thinking.
- (3) The notice must also either:
- (a) direct the operator to ensure that the activity is not engaged in; or
 - (b) direct the operator 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:
 - (i) any workplace, or part of a workplace, at which the activity is not to be engaged in;
 - (ii) any plant or substance that is not to be used in connection with the activity;
 - (iii) any procedure that is not to be followed in connection with the activity.
- (4) The notice may specify action that may be taken to satisfy an inspector that adequate action has been taken to remove the threat to health or safety.

- (5) The operator must ensure that the notice is complied with to the extent that it relates to any matter over which the operator has control.

Penalty for a contravention of subsection (5): 250 penalty units.

94 Inspector to inform person in command if action by operator is inadequate

- (1) If an inspector thinks that action taken by the operator in response to a prohibition notice issued under subsection 93(1) is not adequate to remove the threat to health or safety, the inspector must inform the person in command accordingly.
- (2) In making a decision under subsection (1), an inspector may exercise such of the powers of an inspector conducting an investigation as the inspector thinks necessary for the purposes of making the decision.

95 When prohibition notice stops having effect

A prohibition notice stops having effect when an inspector notifies the person in command that the inspector is satisfied that the operator has taken adequate action to remove the threat to health or safety.

96 Person in command to distribute copies of prohibition notice

The person in command must:

- (a) give a copy of the prohibition notice to the health and safety representative (if any) for each designated work group that includes an employee performing work that is affected by the notice; and
- (b) cause a copy of the notice to be displayed in a prominent place at or near each workplace at which that work is being performed.

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97 Inspector to give copy of prohibition notice to owner of a workplace, plant, substance or thing

If the prohibition notice relates to any workplace, plant, substance or thing that is owned by a person other than the operator, the inspector must, on issuing the notice, give a copy of the notice to that person.

98 Power to issue improvement notices

- (1) If, having conducted an investigation, an inspector thinks that a person:
 - (a) is contravening a provision of this Act or the regulations; or
 - (b) has contravened a provision of this Act or the regulations and is likely to contravene that provision again;the inspector may issue an improvement notice, in writing, to the person in command.
- (2) The notice must:
 - (a) specify the contravention of this Act or the regulations that the inspector thinks is occurring or is likely to occur; and
 - (b) set out the reasons why the inspector thinks the contravention of this Act or the regulations is occurring or is likely to occur; and
 - (c) specify a period, being a period that the inspector thinks reasonable, within which the person in command is to take the action necessary to prevent any further contravention or to prevent the likely contravention, as the case may be.
- (3) The notice may specify action that the person in command is to take during the period specified in the notice.
- (4) If the inspector thinks it is appropriate to do so, the inspector may, in writing and before the end of the period, extend the period specified in the notice.

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- (5) The person in command must ensure that the notice is complied with to the extent that it relates to any matter over which the person has control.

Penalty for a contravention of subsection (5): 100 penalty units.

99 Distribution of copies of improvement notices

- (1) If the person in command receives an improvement notice under subsection 98(1), the person must:
- (a) give a copy of the notice to the health and safety representative (if any) for each designated work group of the employees performing work that is affected by the notice; and
 - (b) cause a copy of the notice to be displayed in a prominent place at or near each workplace at which that work is being performed.
- (2) If the notice relates to any workplace, plant, substance or thing, that is owned by a person other than the operator, the inspector must give a copy of the notice to that person.

100 Appeals

- (1) This section applies to the following decisions of an inspector:
- (a) to confirm or vary a provisional improvement notice under section 59;
 - (b) to cancel a provisional improvement notice under section 59;
 - (c) to take possession of plant, a substance, or a thing at a workplace under section 91;
 - (d) to direct that a workplace, or a part of a workplace, plant, a substance or a thing not be disturbed under section 92;
 - (e) to issue a prohibition notice under section 93;
 - (f) that the operator to whom a prohibition notice is issued has not taken adequate action to remove the threat to health or safety that caused the notice to be issued under section 93;

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- (g) that the operator, to whom a prohibition notice has been issued, has taken adequate action to remove the threat to health or safety that caused the notice to be issued under section 93;
 - (h) to issue an improvement notice under section 98.
- (2) An appeal may be made to the reviewing authority against a decision referred to in paragraphs (1)(a), (c), (d), (e), (f) and (h) (inclusive) by:
 - (a) the operator affected by the decision; or
 - (b) a person in command to whom a notice has been issued under subsection 581(1) or 98(1); or
 - (c) a person to whom a notice has been given under subsection 58(5); or
 - (d) the health and safety representative for a designated work group that includes an employee affected by the decision; or
 - (e) an involved union in relation to such a designated work group; or
 - (f) if there is no such designated work group—an involved union in relation to an employee who is affected by the decision; or
 - (g) a person who owns any plant, substance or thing to which the decision referred to in paragraph (1)(a), (c), (d) or (h) relates.
- (3) An appeal may be made to the reviewing authority against a decision referred to in paragraph (1)(b) or (g) by:
 - (a) a health and safety representative for a designated work group that includes an employee affected by the decision; or
 - (b) an involved union in relation to such a designated work group; or
 - (c) if there is no such designated work group—an involved union in relation to an employee who is affected by the decision.

101 Implementation of decision under appeal

- (1) Subject to this section, the making of an appeal against a decision referred to in subsection 100(1) 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.
- (2) If the decision appealed against is a decision, under section 98, 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.
- (3) If the decision appealed against is a decision of an inspector, under section 59, to confirm or vary a provisional improvement notice whose operation has been suspended pending the investigation of the matter to which the notice relates, 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.

102 Powers of reviewing authority

- (1) The reviewing authority may affirm or revoke the decision appealed against under subsection 100(2) or (3) and may, if it revokes the decision, substitute such other decision of the kind appealed against as it thinks appropriate.
- (2) If the decision is varied, revoked, or revoked with the substitution of another decision, the decision is taken to have effect, and always to have had effect, accordingly.

103 Duty of inspector in relation to a decision under section 91 to take possession of plant, a substance or a thing that is not affirmed

If the decision appealed against is a decision, under section 91, to take possession of plant, a substance or a thing at a workplace, and the decision is not affirmed, the inspector who made the decision

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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 practicable.

104 Liability of inspectors

An inspector 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 inspector; or
- (b) the exercise of any of his or her powers under this Part in relation to the investigation.

105 Notices not to be tampered with or removed

(1) A person must not:

- (a) tamper with any notice that has been displayed under subsection 91(3), 92(4) or 99(1) or section 96 while that notice is so displayed; or
- (b) remove any notice that has been so displayed:
 - (i) in the case of a notice displayed under subsection 91(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 92(4) or 99(1) or section 96—before the notice has ceased to have effect.

Penalty: Imprisonment for 6 months.

(2) Subsection (1) does not apply if the person has a reasonable excuse.

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

106 Arrangements with States or Territories for services of State or Territory officers

- (1) The Governor-General may make arrangements with the Governor of a State for officers of the Public Service of that State to perform the duties and exercise the powers of inspectors under this Part.
- (2) The Governor-General may make arrangements with the Administrator of a Territory for officers of the Public Service of that Territory to perform the duties and exercise the powers of inspectors under this Part.
- (3) 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 a Territory to perform the duties and exercise the powers of inspectors under this Part.

Part 5—Miscellaneous

107 Notifying and reporting accidents and dangerous occurrences

- (1) If, at or near a workplace at which an undertaking is being conducted by the operator, there is, arising out of the conduct of 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 operator must, in accordance with the regulations, give to the Inspectorate notice of, and a report about, the accident or dangerous occurrence.
- (2) Without limiting a provision that may be made by regulations for the purposes of this section, the regulations (not being regulations made for the purpose of paragraph (1)(b)) may prescribe:
 - (a) the time within which, and the manner in which, notice of an accident or dangerous occurrence is to be given, and the form of such a notice; and
 - (b) the time within which, and the manner in which, a report of an accident or dangerous occurrence is to be given, and the form of such a report.

108 Records of accidents and dangerous occurrences to be kept

- (1) An operator must maintain, in accordance with the regulations, a record of each accident or dangerous occurrence in respect of which the operator is required by section 107 to notify the Inspectorate.

- (2) Without limiting the provision that may be made by regulations for the purposes of this clause, the regulations may prescribe:
 - (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.

109 Codes of practice

- (1) For the purpose of providing practical guidance to operators, the Minister may approve codes of practice prepared by the Authority or 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 Authority, the Authority 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 Authority for Ministerial approval under this section that advisory standard or code to the extent that:
 - (a) it has not been incorporated in regulations; and
 - (b) it is capable of relating to employment in the maritime industry.
- (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) If 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.

Section 110

- (6) A code of practice, or a variation or revocation of a code of practice, that is approved by the Minister is a legislative instrument made by the Minister on the day on which he or she approves the code, variation or revocation.
- (7) The Inspectorate must, at all times, ensure that there is available for inspection at the offices of the Inspectorate 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 because 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, that is declared by Safe Work Australia under item 2 of Schedule 3 to the *Safe Work Australia (Consequential and Transitional Provisions) Act 2008*.

110 Use of codes of practice in proceedings

If, in any proceedings for an offence against this Act or the regulations, it is alleged that a person contravened a provision of this Act or the regulations in relation to which a code of practice was in effect at the time of the alleged contravention:

- (a) the code of practice is admissible in evidence in those proceedings; and
 - (b) if the court thinks, in relation to any matter which it is necessary for the prosecution to prove, in order to establish the alleged contravention, that:
 - (i) any provision of the code of practice is relevant to that matter; and
 - (ii) the person failed at any material time to comply with that provision of the code of practice;
- that matter is treated as proved unless the court thinks that, in respect of that matter, the person complied with that provision of

Section 111

this Act or the regulations otherwise than by complying with the code of practice.

111 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.

Penalty: Imprisonment for 6 months.

- (2) Subsection (1) does not apply if the person has a reasonable excuse.

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

112 Recrediting of recreation leave

If an employee is required to attend an occupational health and safety training course on a day that the employee is on recreation leave, the employee must be recredited with a day's recreation leave.

113 Operator not to levy employees etc.

An operator must not levy, or permit to be levied, on any 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.

Penalty: 250 penalty units.

Section 114

114 Annual occupational health and safety report

- (1) As soon as practicable after each 30 June, the Authority must cause to be prepared a report on the operation of this Act and the regulations during the year ending on that date.
- (2) The report must include, in relation to the year:
 - (a) statistics, with appropriate details, of all accidents and dangerous occurrences notified to the Inspectorate under section 107; and
 - (b) details of all prosecutions instituted under this Act and the regulations; 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 91; and
 - (iii) directions given under section 92; and
 - (iv) notices issued under sections 93 and 98; and
 - (v) appeals instituted under section 100 against inspectors' decisions; and
 - (d) particulars of any directions given by the Minister to the Authority or the Inspectorate; and
 - (e) such other matters as are prescribed.

115 Operator not to dismiss etc. employees on certain grounds

- (1) An operator must not:
 - (a) dismiss an employee; or
 - (b) do an act that results in an employee being damaged in his or her employment; or
 - (c) prejudicially alter the employee's position (whether by deducting or withholding remuneration or by any other means); or
 - (d) threaten to do any of those things;because the employee:

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- (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 giving information or otherwise, the conduct of an investigation; or
- (g) has stopped, or proposes to stop, performing work, in accordance with a direction by a health and safety representative under paragraph 80(1)(b), not being a stoppage or proposed stoppage that continues after:
 - (i) the health and safety representative has agreed with a person supervising the work that the stoppage or proposed stoppage was not, or is no longer, necessary; or
 - (ii) an inspector has, under subsection 80(5), made a decision that has the effect that the employee should perform the work.

Penalty: 250 penalty units.

- (2) In proceedings for an offence against subsection (1), if all the relevant facts and circumstances, other than the reason for an action alleged in the charge, are proved, it is for the defendant to show that the action was not taken for that reason.

116 Beginning prosecutions

- (1) Proceedings for an offence against this Act or the regulations may be begun by the Inspectorate or by an inspector.
- (2) If proceedings for an offence against this Act or the regulations have not begun within 6 months after the occurrence of an act or omission which a health and safety representative for a designated work group or an involved union in relation to such a designated work group, thinks constitutes an offence against this Act or the regulations, that health and safety representative or that involved union may, in writing, ask the Inspectorate to begin such proceedings.

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- (3) The Inspectorate must, within 3 months after receiving the request, advise the health and safety representative or the involved union, as the case may be, whether proceedings under subsection (1) have been or will be begun, and, if not, give reasons why not.

117 Conduct of servants and agents

- (3) If it is necessary to establish the state of mind of an individual in relation to particular conduct, it is sufficient to show:
 - (a) that the conduct was engaged in by a servant or agent of the individual within the scope of actual or apparent authority; and
 - (b) that the servant or agent had the state of mind.
- (4) Any conduct engaged in on behalf of an individual by a servant or agent of the individual within the scope of actual or apparent authority is taken to have been engaged in also by the individual unless the individual establishes that he or she took reasonable precautions and exercised due diligence to avoid the conduct.
- (5) If:
 - (a) an individual is convicted of an offence; and
 - (b) he or she would not have been convicted of the offence if subsections (3) and (4) had not been enacted;he or she is not liable to be punished by imprisonment for that offence.
- (6) A reference in subsection (3) to the state of mind of a person includes a reference to:
 - (a) the person's knowledge, intention, opinion, belief or purpose; and
 - (b) the person's reasons for the intention, opinion, belief or purpose.
- (7) This section has effect for the purposes of any proceeding for an offence against this Act or the regulations.

118 Act not to give rise to other liabilities etc.

This Act does not confer:

- (a) a right of action in any civil proceeding in respect of any contravention of a provision of this Act or the regulations; or
- (b) a defence to an action in any civil proceeding or otherwise affect a right of action in any civil proceeding.

119 Circumstances preventing compliance with Act may be defence to prosecution

It is a defence to a prosecution for refusing or failing to do anything required by this Act or the regulations if the defendant proves that it was not practicable to do it because of an emergency prevailing at the relevant time.

120 Regulations—general

- (1) Without limiting the generality of the power to make regulations for the purposes of this Act, the regulations may prescribe:
 - (a) procedures for the election of persons, under sections 41, 42, 43 and 44, as health and safety representatives; and
 - (b) procedures for the selection of persons, under section 73, as members of health and safety committees, to represent the interests of employees; and
 - (c) procedures to be followed at meetings of health and safety committees; and
 - (d) the manner in which notices are to be served under this Act or the regulations; and
 - (e) forms for the purposes of this Act or the regulations.
- (2) If the Governor-General is satisfied that:
 - (a) a power, function or duty is conferred or imposed on a person under a law of the Commonwealth or of a State or Territory; and

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- (b) the proper exercise of the power or performance of the function or duty is or would be prevented by this Act or a provision of this Act;
regulations made for the purposes of this subsection may declare that this Act, or the provision, as the case may be, does not apply to that person, or does not apply to that person in the circumstances specified in the regulations.
- (3) Regulations made for the purposes of subsection (2) do not remain in force for longer than 5 years after they commence, but this subsection does not prevent the making of further regulations of the same substance.
- (4) In subsection (2), *this Act* includes regulations made for the purposes of this Act.

121 Regulations—power to make

The Governor-General may make regulations 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;

including regulations imposing penalties (not exceeding 10 penalty units) for a contravention of the regulations.

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Endnotes about misdescribed amendments and other matters are included in a compilation only as necessary.

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the amendment is set out in the endnotes.

Endnotes

Endnote 2—Abbreviation key

Endnote 2—Abbreviation key

| | |
|--|--|
| A = Act | orig = original |
| ad = added or inserted | par = paragraph(s)/subparagraph(s) /sub-subparagraph(s) |
| am = amended | pres = present |
| amdt = amendment | prev = previous |
| c = clause(s) | (prev...) = previously |
| C[x] = Compilation No. x | Pt = Part(s) |
| Ch = Chapter(s) | r = regulation(s)/rule(s) |
| def = definition(s) | Reg = Regulation/Regulations |
| Dict = Dictionary | reloc = relocated |
| disallowed = disallowed by Parliament | renum = renumbered |
| Div = Division(s) | rep = repealed |
| exp = expires/expired or ceases/ceased to have effect | rs = repealed and substituted |
| F = Federal Register of Legislative Instruments | s = section(s)/subsection(s) |
| gaz = gazette | Sch = Schedule(s) |
| LI = Legislative Instrument | Sdiv = Subdivision(s) |
| LIA = <i>Legislative Instruments Act 2003</i> | SLI = Select Legislative Instrument |
| (md) = misdescribed amendment | SR = Statutory Rules |
| mod = modified/modification | Sub-Ch = Sub-Chapter(s) |
| No. = Number(s) | SubPt = Subpart(s) |
| o = order(s) | <u>underlining</u> = whole or part not commenced or to be commenced |
| Ord = Ordinance | |

Endnote 3—Legislation history

Endnote 3—Legislation history

| Act | Number and year | Assent | Commencement | Application, saving and transitional provisions |
|--|-----------------|-------------|--|---|
| Occupational Health and Safety (Maritime Industry) Act 1993 | 10, 1994 | 18 Jan 1994 | s 3–8 and 11–120: 18 July 1994 (s 2(3)) s 9 and 10: 21 Feb 1994 (s 2(2) and gaz 1994, No S48) Remainder: 18 Jan 1994 (s 2(1)) | |
| Transport and Communications Legislation Amendment Act 1994 | 64, 1994 | 30 May 1994 | Sch 1: 18 July 1994 (s 2(2)(b)) | — |
| Workplace Relations and Other Legislation Amendment Act 1996 | 60, 1996 | 25 Nov 1996 | Sch 19 (item 36): 25 Nov 1996 (s 2(1)) | — |
| as amended by Workplace Relations and Other Legislation Amendment Act (No. 2) 1996 | 77, 1996 | 19 Dec 1996 | Sch 3 (items 1, 2): 25 Nov 1996 (s 2(4)) | — |
| Marine Personnel Legislation Amendment Act 1997 | 10, 1997 | 8 Mar 1997 | Sch 2 (items 1–8): 8 Mar 1997 (s 2(1)) Sch 2 (item 9): 18 July 1994 (s 2(3)) | — |
| Public Employment (Consequential and Transitional) Amendment Act 1999 | 146, 1999 | 11 Nov 1999 | Sch 1 (item 702): 5 Dec 1999 (s 2(1), (2)) | — |

Endnotes

Endnote 3—Legislation history

| Act | Number and year | Assent | Commencement | Application, saving and transitional provisions |
|--|------------------------|---------------|---|--|
| Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000 | 137, 2000 | 24 Nov 2000 | Sch 2 (items 301, 418, 419); 24 May 2001 (s 2(3)) | Sch 2 (items 418, 419) |
| Employment, Workplace Relations and Small Business Legislation Amendment (Application of Criminal Code) Act 2001 | 142, 2001 | 1 Oct 2001 | s 4 and Sch 1 (items 98–110); 2 Oct 2001 (s 2(1)) | s 4 |
| National Occupational Health and Safety Commission (Repeal, Consequential and Transitional Provisions) Act 2005 | 135, 2005 | 15 Nov 2005 | Sch 2 (items 9–11): 1 Jan 2006 (s 2(1) item 2) | Sch 2 (item 10) |
| Offshore Petroleum (Repeals and Consequential Amendments) Act 2006 | 17, 2006 | 29 Mar 2006 | Sch 2 (item 54): 1 July 2008 (s 2(1) item 2) | — |
| Offshore Petroleum Amendment (Greenhouse Gas Storage) Act 2008 | 117, 2008 | 21 Nov 2008 | Sch 3 (item 23): 22 Nov 2008 (s 2(1) item 4) | — |
| Safe Work Australia (Consequential and Transitional Provisions) Act 2008 | 157, 2008 | 18 Dec 2008 | Sch 2 (items 3, 4): 1 Nov 2009 (s 2(1) item 2) | Sch 2 (item 4) |
| Fair Work (State Referral and Consequential and Other Amendments) Act 2009 | 54, 2009 | 25 June 2009 | Sch 8 (item 103): 1 July 2009 (s 2(1) item 24) | — |

Endnote 3—Legislation history

| Act | Number and year | Assent | Commencement | Application, saving and transitional provisions |
|--|----------------------------|-----------------|--|--|
| Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010 | 103, 2010 | 13 July 2010 | Sch 6 (items 1, 78–80): 1 Jan 2011 (s 2(1) items 3, 5) | — |
| Safety, Rehabilitation and Compensation and Other Legislation Amendment Act 2011 | 181, 2011 | 6 Dec 2011 | Sch 1: 7 Dec 2011 (s 2) | — |
| Coastal Trading (Revitalising Australian Shipping) (Consequential Amendments and Transitional Provisions) Act 2012 | 56, 2012 | 21 June 2012 | Sch 1 (items 7–14): 1 July 2012 (s 2(1) item 2) | — |
| Navigation (Consequential Amendments) Act 2012 | 129, 2012 | 13 Sept 2012 | Sch 2 (items 34–42): 1 July 2013 (s 2(1) item 2) | — |
| Fair Work Amendment Act 2012 | 174, 2012 | 4 Dec 2012 | Sch 9 (item 1290): 1 Jan 2013 (s 2(1) item 5) | — |
| Seafarers Rehabilitation and Compensation and Other Legislation Amendment Act 2015 | 51, 2015 | 26 May 2015 | Sch 1 (items 8, 9): 18 July 1994 (s 2(1) item 3) Sch 1A (items 4, 5): 27 May 2015 (s 2(1) item 3A) | Sch 1 (item 9) and Sch 1A (item 5) |

Endnotes

Endnote 3—Legislation history

| Number and year | FRLI registration | Commencement | Application, saving and transitional provisions |
|-----------------|-------------------------------|---|--|
| 165, 2009 | 30 June 2009 (F2009L02568) | Sch 1 (item 23): 1 July 2009 (r 2) | — |
| as amended by | | | |
| 337, 2009 | 27 Nov 2009 (F2009L04339) | Sch 1 (item 5): 28 Nov 2009 (r 2(a)) | — |

Endnote 4—Amendment history

Endnote 4—Amendment history

| Provision affected | How affected |
|--------------------|--|
| Part 1 | |
| Division 2 | |
| s 4 | am No 60, 1996; No 10, 1997; No 17, 2006; No 117, 2008; No 54, 2009; SLI No 165, 2009 (as am by SLI No 337, 2009); No 56, 2012; No 129, 2012; No 174, 2012 |
| s 4A..... | ad No 129, 2012 |
| s 4B..... | ad No 129, 2012 |
| Division 3 | |
| s 6 | am No 10, 1997; No 56, 2012; No 129, 2012; No 51, 2015 |
| s 7 | am No 129, 2012 |
| s 8A..... | ad No 142, 2001 |
| Part 2 | |
| Division 1 | |
| s 13 | am No 142, 2001 |
| s 18 | am No 103, 2010 |
| s 21 | am No 103, 2010 |
| s 26 | am No 103, 2010 |
| Part 4 | |
| Division 3 | |
| s 85 | am No 142, 2001 |
| s 90 | am No 137, 2000; No 142, 2001 |
| s 100 | am No 10, 1997 |
| s 105 | am No 142, 2001 |
| s 106 | am No 146, 1999 |
| Part 5 | |
| s 109 | am No 10, 1997; No 135, 2005; No 157, 2008; No 181, 2011 |
| s 111 | am No 142, 2001 |
| s 115 | am No 142, 2001 |
| s 117 | am No 142, 2001 |

Endnotes

Endnote 4—Amendment history

| Provision affected | How affected |
|--------------------|----------------|
| s 121 | ad No 64, 1994 |
| | am No 10, 1997 |