

PETROLEUM SAFETY BILL 1998

ARRANGEMENT

Page

PART 1 — PRELIMINARY

1.	Short title	2
2.	Commencement	2
3.	Definitions	2
4.	Meaning of “petroleum operation”	8
5.	Meaning of “petroleum site”	9
6.	Meaning of “serious harm”	10
7.	Crown bound	10
8.	Application of this Act (including regulations made under this Act)	10
9.	Inconsistent laws	11
10.	Power to exempt	11
11.	Notes not part of Act	11
12.	Title holders for petroleum sites within the State or in State coastal waters to appoint operator etc.	12

Petroleum Safety Bill 1998

**PART 2 — GENERAL DUTIES RELATING TO SAFETY AND
HEALTH AT PETROLEUM SITES**

13.	Duties of title holders	13
14.	Duties of operator	14
15.	Duties of employers	14
16.	Duties of persons who engage others under contract	15
17.	Duties of employees	16
18.	Duties of self-employed persons and employers	17
19.	Duties of manufacturers etc.	18
20.	Duties under this Part apply in addition to other duties under the Act (including regulations made under the Act)	20
21.	Person not liable to be punished twice	20

PART 3 — ADMINISTRATION OF ACT

Division 1 — Appointment of persons

22.	The State Petroleum Director	21
23.	Delegation of State Petroleum Director's functions	21
24.	Appointment of inspectors	21

Division 2 — Inspectors

25.	Powers of inspectors	22
26.	Power to give directions	25
27.	Use and misuse of information by inspectors and assistants	26
28.	Certificates of appointment	28
29.	Provision of means of travel for inspection etc.	28
30.	Obstruction etc.	29
31.	False or misleading answers and information	30
32.	Compliance with inspector's directions	30
33.	Objecting to inspector's directions	32
34.	State Petroleum Director may revoke inspector's direction	32
35.	Arbitration concerning direction	33
36.	Proceedings for offences for contravening directions or awards	34
37.	Contracts and directions or awards	34

PART 4 — SAFETY CASES

38.	Safety case — a strategy for dealing with safety issues	35
39.	Application	35
40.	Certain work at petroleum sites to comply with, and not to begin without, relevant safety case	35
41.	Prescribed matters as to safety cases	36
42.	Consultation in preparation of safety case	37
43.	Duties under this Part and regulations under this Part apply in addition to other duties under the Act (including regulations made under the Act)	37

PART 5 — SAFETY AND HEALTH REPRESENTATIVES AND COMMITTEES

Division 1 — Safety and health representatives

44.	Functions of safety and health representatives	38
45.	Notice requiring election of safety and health representative	40
46.	Consultation on election matters	40
47.	Election of safety and health representatives	41
48.	Terms of office	43
49.	Disqualification of safety and health representatives	43
50.	Operator to ensure safety of safety and health representative during inspections	46
51.	Duties of employers, self-employed persons and the operator regarding safety and health representatives	46
52.	Medical information about employees to be confidential	49
53.	Regulations regarding time off work for safety and health representatives	49

Division 2 — Safety and health committees

54.	Functions of safety and health committees	51
55.	Request for safety and health committee to be established	52
56.	Establishment of safety and health committee	53

Petroleum Safety Bill 1998

57.	Composition of safety and health committee	54
58.	Review of State Petroleum Director's decision	56
59.	Procedure of safety and health committees	57

Division 3 — Discrimination

60.	Discrimination	57
-----	----------------	----

PART 6 — DEALING WITH SAFETY AND HEALTH

61.	Resolution of issues at the petroleum site	59
62.	Inspector may be notified if issue unresolved	60
63.	Refusal by employee to work in certain cases	61
64.	Assignment of other work	62
65.	Entitlements to continue	62
66.	Offences — refusal to work	63

PART 7 — SPECIFIC MATTERS RELATING TO SAFETY AND HEALTH

Division 1 — Health surveillance

67.	Health surveillance of employees	65
-----	----------------------------------	----

Division 2 — Reporting, records and accident sites

68.	Application	65
69.	Reporting accidents and diseases	66
70.	Reporting certain occurrences	67
71.	Reporting potentially hazardous events	68
72.	Accident records	68
73.	Place of accident not to be disturbed	70

PART 8 — MINISTERIAL SAFETY AND HEALTH POWERS

74.	Interpretation	71
75.	Petroleum Safety Advisory Board	71
76.	Board's functions and procedure	72

Petroleum Safety Bill 1998

77.	Minister may publish report	73
78.	Delegation of ministerial functions	73
79.	Codes of practice	73

PART 9 — LEGAL PROCEEDINGS

80.	Jurisdiction of safety and health magistrate	76
81.	Offence proceedings to be determined by safety and health magistrate	76
82.	Proceedings to be taken by inspector or authorized officer	76
83.	Time limit for prosecutions	77
84.	Evidentiary provisions	77
85.	Vicarious responsibility of operators and employers	79
86.	Offences by corporations	80
87.	Continuing offences	80

PART 10 — MISCELLANEOUS

88.	Protection from liability	81
89.	False or misleading entries in records	81
90.	Regulations	82
91.	Publication of regulations at petroleum site	83
92.	Consequential amendments	83
93.	Review of Act	83

SCHEDULE 1 — SUBJECT MATTER FOR REGULATIONS 85

SCHEDULE 2 — CONSEQUENTIAL AMENDMENTS 89

WESTERN AUSTRALIA

LEGISLATIVE ASSEMBLY

PETROLEUM SAFETY BILL 1998

A BILL FOR

**AN ACT relating to the safety and health of persons at,
and in respect of, petroleum sites and for related
purposes.**

The Parliament of Western Australia enacts as follows:

cl. 1

PART 1 — PRELIMINARY

Short title

1. This Act may be cited as the *Petroleum Safety Act 1998*.

Commencement

2. The provisions of this Act come into operation on such day as is fixed by proclamation.

Definitions

3. In this Act, unless the contrary intention appears —

10 “**access authority**” means an access authority within the meaning of a petroleum law;

 “**Board**” means the Petroleum Safety Advisory Board established under section 75;

 “**code of practice**” means a code of practice approved under section 79;

15 “**Commonwealth-State offshore area**” means the adjacent area in respect of Western Australia determined in accordance with section 5A of the *Petroleum (Submerged Lands) Act 1967* of the Commonwealth and includes the space above and
20 below the adjacent area deemed by that Act to be in that area;

 “**department**” means the department of the Public Service of the State principally assisting the Minister in the administration of this Act;

“**drilling reservation**” means a drilling reservation within the meaning of the *Petroleum Act 1967*;

“**employee**” means a person who works at a petroleum site under a contract of employment or apprenticeship;

5 “**employer**” means a person who employs an employee to work at a petroleum site under a contract of employment or apprenticeship;

10 “**hazard**”, in relation to a person, means anything that may result in injury to the person or harm to the health of the person;

“**inspector**” means a person who is —

- (a) a safety inspector; or
- (b) a special inspector;

15 “**lease**” means a lease within the meaning of a petroleum law;

“**licence**” means a licence within the meaning of a petroleum law;

“**operator**” —

20 (a) in relation to a facility within the meaning of the *Petroleum (Submerged Lands) (Management of Safety on Offshore Facilities) Regulations 1996* of the Commonwealth, has the meaning that it has in those regulations;

25 (b) in relation to a petroleum site in an area other than the Commonwealth-State offshore area, means the person recorded under section 12 (2) as the operator of the site;

cl. 3

“permit” means a permit within the meaning of a petroleum law;

“petroleum” means —

- 5
- (a) a naturally occurring hydrocarbon, whether in a gaseous, liquid or solid state;
- (b) a naturally occurring mixture of hydrocarbons, whether in a gaseous, liquid or solid state; or
- 10
- (c) a naturally occurring mixture of one or more hydrocarbons, whether in a gaseous, liquid or solid state, and any one or more of hydrogen sulphide, nitrogen, helium and carbon dioxide,

and includes petroleum as defined by paragraph (a), (b) or (c) that has been returned to a natural reservoir;

“petroleum authorization” means —

- 15
- (a) a permit, drilling reservation, lease, licence, pipeline licence, access authority or special prospecting authority that is granted, renewed, extended or continued (whether as the same or a different kind of petroleum authorization) under a petroleum law; or
- 20
- (b) a direction given under, or an instrument of consent provided for the purposes of, a petroleum law;

“petroleum law” means the —

- 25
- (a) *Petroleum Act 1967*;
- (b) *Petroleum Pipelines Act 1969*;
- (c) *Petroleum (Submerged Lands) Act 1982*; or

(d) *Petroleum (Submerged Lands) Act 1967* of the Commonwealth as it applies in respect of the Commonwealth-State offshore area;

5 “**petroleum operation**” has the meaning given by section 4;

“**petroleum site**” has the meaning given by section 5;

10 “**pipeline licence**” means a pipeline licence within the meaning of the *Petroleum (Submerged Lands) Act 1982* or the *Petroleum (Submerged Lands) Act 1967* of the Commonwealth;

“**plant**” includes machinery, equipment, appliance, implement, or tool and a component or fitting of or accessory to any of those things;

15 “**practicable**” means reasonably practicable having regard, if the context permits, to —

(a) the severity of potential injury or harm to health that may be involved and the degree of risk of the injury or harm occurring;

(b) the state of knowledge about —

20 (i) the injury or harm referred to in paragraph (a);

(ii) the risk of the injury or harm occurring; and

25 (iii) the means of removing or mitigating the potential injury or harm;

and

(c) the availability, suitability, and cost of the means referred to in paragraph (b) (iii);

cl. 3

“public service officer” has the meaning that it has in the *Public Sector Management Act 1994*;

“risk”, in relation to an injury or harm, means the probability of the injury or harm occurring;

5 **“safety and health committee”** means a safety and health committee established under section 56;

10 **“safety and health magistrate”** means a person holding office as a safety and health magistrate under section 51B of the *Occupational Safety and Health Act 1984*;

“safety and health representative” means a safety and health representative elected under section 47;

“safety inspector” means a safety inspector referred to in section 24 (1);

15 **“self-employed person”** means a person who works at a petroleum site for gain or reward otherwise than under a contract of employment or apprenticeship, whether or not the person employs another person;

“serious harm” has the meaning given by section 6;

20 **“serious injury”**, in relation to a person, means an injury —

(a) resulting, or likely to result, in the person’s being disabled from working in the person’s ordinary occupation for 2 weeks or more; or

25 (b) involving unconsciousness in the person arising from inhalation of fumes or poisonous gases or asphyxiation because of lack of oxygen or displacement of oxygen by an inert gas;

“serious property damage” means —

- (a) loss or destruction of property with a value of more than \$20 000 or another amount that is prescribed for the purposes of this paragraph; or
- 5 (b) property damage the repair costs for which would be more than \$20 000 or another amount that is prescribed for the purposes of this paragraph;

“site” means a petroleum site;

10 “special inspector” means a special inspector referred to in section 24 (2) and includes a person designated as a special inspector under section 24 (4);

15 “special prospecting authority” means a special prospecting authority within the meaning of a petroleum law;

“State coastal waters” means the adjacent area within the meaning of the *Petroleum (Submerged Lands) Act 1982* and includes the space above and below the adjacent area deemed by that Act to be in that area;

20 “State Petroleum Director” means the person who for the time being holds, or acts in, the office referred to in section 22;

25 “supply”, in relation to plant or a substance, includes supply or re-supply by way of sale, exchange, lease, hire, or hire-purchase, whether as principal or agent;

“title holder”, in relation to a petroleum site, means a person who has a petroleum authorization in relation to the site;

cl. 4

“trade union” means —

- (a) an organization within the meaning of the *Industrial Relations Act 1979*; or
- 5 (b) an organisation registered under the *Workplace Relations Act 1996* of the Commonwealth and having employees as some or all of its members, or a branch of that kind of organization;

10 “workplace”, in relation to a petroleum site, means a place, whether or not in a vehicle, vessel, building, or other structure, where an employee works or is likely to be in the course of his or her work, but does not include catering, residential, or recreational facilities for the employee except in the case of an employee who is employed to service and maintain, or otherwise
15 work in, that kind of facility, but this exception only applies to the period in which that employee is so working in the facility.

Meaning of “petroleum operation”

20 4. (1) In this Act a reference to a petroleum operation is a reference to any thing —

- (a) required by a petroleum law not to be done unless a petroleum authorization is in force in relation to the doing of the thing;
- 25 (b) authorized or required to be done under a petroleum authorization; or
- (c) declared under subsection (2) to be a petroleum operation.

30 **Note:** The rights conferred by petroleum authorizations can include, for example, the authority (subject to the relevant petroleum law, regulations and in accordance with conditions to which the authorization is subject) to explore or drill for, or recover, petroleum; to carry on (in an area to which the authorization applies) such operations and execute such works as are necessary for the authorized purpose or as are specified in the authorization; and to transport petroleum by pipeline.

(2) The Minister may, by order published in the *Gazette*, declare any operation other than an operation referred to in subsection (1) (a) or (b) to be a petroleum operation for the purposes of this Act.

5 (3) In an order under subsection (2), the Minister may exempt the operation from such provisions of this Act as are specified in the order and may impose conditions under which the operation is to be conducted.

10 (4) This Act applies to an operation referred to in an order under subsection (2) as a petroleum operation subject to the terms of the order.

Meaning of “petroleum site”

15 5. (1) A reference in this Act to a petroleum site is a reference to a place at which a petroleum operation is conducted and, if a petroleum operation is being conducted in conjunction with another petroleum operation at 2 or more places, those places are to be treated as constituting one petroleum site unless the State Petroleum Director notifies the operator in writing otherwise in accordance with subsection (2).

20 (2) If a petroleum operation is being conducted in conjunction with another petroleum operation at 2 or more places then the State Petroleum Director may notify the operator in writing that one or more of those places, as specified in the notice, is to be treated as a separate petroleum site for the
25 purposes of this Act.

(3) Unless the contrary intention appears, a reference in this Act to a petroleum site includes a reference to a part of a petroleum site.

cl. 6

Meaning of “serious harm”

6. For the purposes of sections 44 (1) (b), 62 (1), 63 (1) and (5) and 70 (1) a matter causes serious harm to a person if it causes the person to have a disease of a nature that —

- 5 (a) endangers, or is likely to endanger, the person’s life;
 or
- (b) results, or is likely to result, in a long term adverse effect on the person’s health.

Crown bound

10 **7.** This Act binds the Crown.

Application of this Act (including regulations made under this Act)

8. Unless otherwise specified, this Act applies to a petroleum site —

- 15 (a) in any part of the State to which the *Petroleum Act 1967* or the *Petroleum Pipelines Act 1969* applies;
- (b) in the State coastal waters; or
- (c) in the Commonwealth-State offshore area (except to the extent to which this Act is inconsistent with a
- 20 Commonwealth law).

Notes: 1. As to the State’s capacity to legislate in respect of the State coastal waters see the *Coastal Waters (State Powers) Act 1980* of the Commonwealth section 5.

25 2. As to the State’s capacity to legislate in respect of the Commonwealth-State offshore area see the *Petroleum (Submerged Lands) Act 1967* of the Commonwealth sections 9 and 140H (2).

Inconsistent laws

9. If a provision of this Act is inconsistent with a provision of the *Radiation Safety Act 1975*, the latter provision prevails to the extent of the inconsistency.

5 **Power to exempt**

10. (1) The Minister may, by order published in the *Gazette* —

(a) exempt a petroleum site or class of petroleum site —

10 (i) from the provisions of this Act that are specified in the order; and

(ii) for the period specified in the order;

and

(b) amend or repeal an order made under paragraph (a).

15 (2) An exemption given for the purposes of this section is of no effect at any time when a condition imposed in relation to the exemption is being contravened.

20 (3) Section 42 of the *Interpretation Act 1984* applies to an order under subsection (1) as if the order were regulations within the meaning of that Act, except that the reference in section 42 (1) of that Act to 6 sitting days is, for the purposes of its application to the order, to be construed as a reference to 9 sitting days.

Notes not part of Act

25 11. Notes in this Act are provided to assist understanding and do not form part of the Act.

cl. 12

Title holders for petroleum sites within the State or in State coastal waters to appoint operator etc.

5 **12.** (1) A person who is a title holder for a petroleum site in an area other than the Commonwealth-State offshore area must ensure that —

- 10 (a) there is a person (the “**operator**”) who is responsible for the overall management and operation of the site at all times during which a petroleum operation is being conducted at the site;
- 15 (b) before a petroleum operation begins at the site, the State Petroleum Director has been notified, in accordance with the regulations, of the operator’s particulars; and
- (c) the State Petroleum Director is notified, in accordance with the regulations, of changes to the operator’s particulars.

Penalty: \$200 000.

(2) The State Petroleum Director is to keep a record of matters notified for the purposes of this section.

20 **Note:** The *Petroleum (Submerged Lands) (Management of Safety on Offshore Facilities) Regulations 1996* of the Commonwealth apply in relation to the Commonwealth-State offshore area.

**PART 2 — GENERAL DUTIES RELATING TO SAFETY
AND HEALTH AT PETROLEUM SITES**

Duties of title holders

5 **13.** (1) A person who is a title holder for a petroleum site
must ensure —

(a) that the operator of the site —

(i) is capable of performing; and

(ii) performs,

10 in a responsible and competent manner the functions
that the operator has under this Act; and

(b) subject to subsection (2), that the operator of the site
is present at the site at all times during which a
petroleum operation is being conducted at the site.

Penalty: \$200 000.

15 (2) Subject to subsection (3), subsection (1) (b) does not apply
if the State Petroleum Director gives a title holder for a
petroleum site a notice of authorization for a petroleum operation
of a kind specified in the notice to be conducted at the site when
the operator is not present at the site.

20 (3) An authorization given for the purposes of this section is
of no effect at any time when a condition imposed in relation to
the authorization is being contravened.

(4) The State Petroleum Director is to keep a record of
authorizations given for the purposes of this section.

cl. 14

Duties of operator

14. The operator of a petroleum site must take measures that are practicable to ensure that —

- (a) the site; and
- 5 (b) the means of entering and leaving the site,

do not expose a person who is at the site, or who uses the means of entering or leaving the site, to hazards.

Penalty: \$200 000.

Duties of employers

10 **15.** (1) The employer of an employee who works at a petroleum site must, so far as is practicable, ensure that the employee is not exposed to a hazard at the site and, in particular, but without limiting the generality of that general duty, the employer must —

- 15 (a) ensure that there is provided and maintained at the site a working environment in which, so far as is practicable, the employee is not exposed to a hazard;
- (b) ensure that each workplace and the plant at the site is provided and maintained so that, so far as is practicable, the employee is not exposed to a hazard;
- 20 (c) provide and maintain for the employee systems of work at the site so that, so far as is practicable, the employee is not exposed to a hazard;
- 25 (d) ensure that the employee is provided with the necessary information, instruction, training and supervision to enable the employee to work at the site so that, so far as is practicable, the employee is not exposed to a hazard;

- (e) consult and cooperate with the operator of the site, the safety and health representatives for the site, if any, and other persons who work at the site regarding safety and health at the site;
- 5 (f) if it is not practicable to avoid the presence of a hazard at the site, ensure that the employee is provided, at no cost to the employee, with adequate personal protective clothing and equipment that is practicable to protect the employee against the hazard; and
- 10 (g) ensure that, so far as is practicable —
- (i) the use, cleaning, maintenance, transportation, and disposal of plant; and
- (ii) the use, handling, processing, storage, transportation, and disposal of a substance,
- 15 at the site is done in a manner that does not expose the employee to a hazard.

Penalty: \$200 000.

- (2) In determining the training required to be provided in accordance with subsection (1) (d), regard must be had to the functions performed by the employee and the capacity in which the employee is employed.
- 20

Duties of persons who engage others under contract

- 16.** (1) If a person (the “**principal**”) engages another person (the “**contractor**”) under a contract for services to do work for the principal in the course of a petroleum operation, the principal is deemed, for the purposes of section 15, to be the employer of —
- 25

- (a) the contractor;

cl. 17

(b) each person employed or engaged by the contractor to do or to assist in doing the work; and

(c) each person who by subsection (2) is deemed, for the purposes of section 15, to be an employee of the contractor.

5

(2) The persons mentioned in subsection (1) (a), (b) and (c) are deemed, for the purposes of section 15, to be employees of the principal.

(3) Subsections (1) and (2) apply only in relation to a matter over which, and the extent to which, the principal —

10

(a) has control or can reasonably be expected to have control; or

(b) would have had control, or could reasonably have been expected to have control, had there not been an agreement between the principal and the contractor to the contrary.

15

(4) Nothing in this section lessens —

(a) the duties of the principal to the contractor; or

(b) the duties of the contractor to persons employed or engaged by the contractor.

20

Duties of employees

17. (1) An employee must take reasonable care —

(a) to ensure his or her own safety or health at work; and

(b) to avoid adversely affecting the safety or health of another person through an act or omission at work.

25

Penalty: \$20 000.

(2) Without limiting the generality of subsection (1), an employee contravenes that subsection if the employee —

- 5 (a) fails to comply, so far as the employee is reasonably able, with instructions given by the employee's employer for the employee's own safety or health or for the safety or health of another person;
- (b) fails to use protective clothing and equipment provided under section 15 (1) (f) in a manner in which the employee has been properly instructed to use it;
- 10 (c) misuses or damages equipment that has been provided in the interests of safety or health; or
- (d) fails to report forthwith to the employee's employer —
- 15 (i) a situation at the site that the employee has reason to believe could constitute a hazard to a person and the employee cannot personally correct; or
- 20 (ii) an injury to, or harm to the health of, a person that arises in the course of, or in connection with, the employee's work and of which the employee is aware.

(3) An employee must cooperate with his or her employer in the steps taken by the employer to fulfil the employer's duties under this Act.

Penalty: \$20 000.

25 Duties of self-employed persons and employers

- 18.** (1) A self-employed person must —
- (a) take reasonable care to ensure his or her own safety and health at work; and

cl. 19

- 5 (b) so far as is practicable, ensure that the safety or health of a person who is not an employee of the self-employed person is not adversely affected wholly or in part as a result of the work done by the self-employed person.

Penalty: \$200 000.

- (2) An employer must —
- 10 (a) take reasonable care to ensure his or her own safety and health at the petroleum site where an employee of the employer works; and
- 15 (b) so far as is practicable, ensure that the safety or health of a person who is not an employee of the employer is not adversely affected wholly or in part as a result of the work done by an employee of the employer.

Penalty: \$200 000.

Duties of manufacturers etc.

- 20 **19.** (1) A person who designs, manufactures, imports or supplies plant for use at a petroleum site must, so far as is practicable —

- (a) ensure that the plant is designed and constructed so that a person who properly uses the plant is not, in doing so, exposed to a hazard;
- 25 (b) test and examine, or arrange for the testing and examination of, the plant so as to ensure that its design and construction are as required by paragraph (a); and
- (c) ensure that adequate information in respect of —
- (i) hazards associated with the plant;

- 5
- (ii) the plant's specifications and the data obtained on the plant's testing referred to in paragraph (b);
 - (iii) the conditions necessary to ensure that a person properly using the plant is not, in doing so, exposed to a hazard; and
 - (iv) the proper maintenance of the plant,
- is provided when the plant is supplied, and subsequently whenever requested.

10 (2) A person who erects or installs plant for use at a petroleum site must, so far as is practicable, ensure that it is so erected or installed that a person who properly uses the plant is not exposed to a hazard that arises from, or is increased by, the way in which the plant is erected or installed.

15 (3) A person who designs or constructs a building or structure, including a temporary structure, for use at a petroleum site must, so far as is practicable, ensure that the building or structure is designed and constructed so that a person who properly uses the building or structure is not, in doing so,
20 exposed to a hazard.

(4) A person who manufactures, imports, or supplies a substance for use at a petroleum site must, so far as is practicable, ensure that —

- 25
- (a) adequate toxicological data in respect of the substance; and
 - (b) data that is relevant to the safe use, handling, processing, storage, transportation and disposal of the substance,

30 is provided when the substance is supplied, and subsequently whenever requested.

Penalty applicable to subsections (1), (2), (3) and (4): \$200 000.

cl. 20

Duties under this Part apply in addition to other duties under the Act (including regulations made under the Act)

20. A duty imposed on a person under this Part —

- 5
- (a) does not affect the application of any other duty imposed on the person under this Act; and
 - (b) applies even though any other duty is imposed on the person under this Act.

Person not liable to be punished twice

10 **21.** A person is not liable to be punished twice under this Act in respect of an act or omission.

PART 3 — ADMINISTRATION OF ACT

Division 1 — Appointment of persons

The State Petroleum Director

5 **22.** (1) There is to be established under Part 3 of the *Public Sector Management Act 1994* an office the holder of which has chief responsibility for the administration of petroleum operations.

(2) The person appointed to the office is the State Petroleum Director for the purposes of this Act.

10 (3) The State Petroleum Director has the powers conferred on a safety inspector by Division 2.

Delegation of State Petroleum Director's functions

15 **23.** (1) The State Petroleum Director may, by instrument in writing, delegate to a public service officer, either generally or as otherwise provided in the instrument, a power or duty that the Director has under this Act, other than this power of delegation.

(2) Anything done by a delegate under a delegation under this section has the same force and effect as if it had been done by the State Petroleum Director.

20 **Appointment of inspectors**

24. (1) There are to be 2 kinds of inspectors for the purposes of this Act, namely, safety inspectors and special inspectors.

25 (2) A special inspector may be appointed for the purpose of making an inspection, inquiry or investigation that, in the opinion of the State Petroleum Director, requires technical or scientific training or knowledge.

cl. 25

(3) An inspector is to be appointed under and subject to Part 3 of the *Public Sector Management Act 1994*.

5 (4) Despite subsection (3), a person who is employed elsewhere in the Public Service or otherwise in the public sector may, with the approval of the employing authority concerned, be designated as a special inspector; and a person so designated may continue to be employed on the terms appropriate to the agency or authority from which the person is seconded.

Division 2 — Inspectors

10 Powers of inspectors

25. (1) A safety inspector may, for the purposes of this Act —

- 15 (a) at any time of the day or night, enter, inspect, and examine a petroleum site and examine any plant, substance, or other thing whatsoever at the site (but in a manner that would not unnecessarily impede or obstruct the working of the site);
- 20 (b) when entering a petroleum site, take with the inspector the equipment and materials that the inspector considers appropriate;
- (c) conduct the examination and inquiry that the inspector considers necessary to ascertain whether —
- 25 (i) the provisions of this Act have been or are being complied with in respect of a petroleum site or a petroleum operation; or
- (ii) the provisions of a safety case in effect in relation to a petroleum site have been or are being complied with;

- (d) take and remove a sample of a substance or thing at a petroleum site without paying for the sample;
- (e) take possession of any plant or thing for further examination or testing or for use as evidence;
- 5 (f) take photographs and measurements, and make sketches and recordings;
- (g) require the production of, examine, and take copies of or extracts from, a document;
- 10 (h) require that a petroleum site, or any part of it, be left undisturbed for the period specified in the requirement;
- (i) require a meeting with a person —
 - (i) who is present at a petroleum site;
 - 15 (ii) who the inspector has reasonable grounds to believe was at a petroleum site at any time during the preceding 2 years; or
 - (iii) who the inspector has reasonable grounds to believe is a person to whom section 19 applies or is an employee of that kind of person,
- 20 and interview the person at a place, and with other persons present or otherwise, as the inspector considers appropriate;
- (j) require a person interviewed under paragraph (i) to answer a question put to the person and, if the inspector considers it appropriate, to verify the answer by statutory declaration;
- 25 (k) require a person to state his or her name and address;

cl. 25

- (l) require a person who is —
- (i) the operator of a petroleum site;
 - (ii) the employer of an employee who works at a petroleum site; or
 - 5 (iii) a self-employed person who works at a petroleum site,
- to give the inspector the assistance that the inspector considers necessary for the performance of the inspector's functions under this Act;
- 10 (m) initiate and conduct a prosecution of a person for an offence under this Act;
- (n) obtain a written statement from a potential witness, and appear at an inquiry held regarding an accident at a petroleum site or at an inquest, and call and
15 examine witnesses and cross-examine witnesses; or
- (o) exercise a power that is conferred on an inspector by the regulations or that may be necessary for the performance of the inspector's functions under this Act and for the purpose of giving effect to this Act.
- 20 (2) A special inspector may, for the purposes of this Act —
- (a) exercise the powers conferred on a safety inspector by subsection (1) except those conferred by paragraphs (m) and (n) of that subsection;
 - 25 (b) with the authority of the State Petroleum Director, initiate and conduct a prosecution of a person for an offence under this Act; or
 - (c) if a safety inspector so directs, obtain a written statement from a potential witness, and appear at an inquiry held regarding an accident at a petroleum site or at an inquest, and call and examine witnesses and
30 cross-examine witnesses.

5 (3) In exercising a power under this Act, an inspector may be accompanied by another person whose assistance the inspector considers necessary, and the person may do the things that are necessary to assist the inspector in the performance of the inspector's functions, and anything so done is deemed to have been done by the inspector.

10 (4) If an inspector intends to inspect and examine a petroleum site under the powers conferred by this section, the inspector must, if practicable, on entering the site, give notice of his or her intention to do so, either to the operator, or in the absence of the operator, to another responsible person.

(5) A person who has been given notice under subsection (4) must, if practicable —

15 (a) immediately notify the safety and health representative for the site; or

(b) if there is more than one safety and health representative for the site, immediately notify the representatives who have functions relevant to the matter or area with which the inspector is concerned,
20 of the intention to inspect and examine the site.

Penalty: \$5 000.

(6) In subsections (1), (2) and (4) —

25 “**petroleum site**” includes a building, structure, vehicle, vessel or aircraft that is used in connection with a petroleum site but is not itself a petroleum site.

Power to give directions

26. (1) A safety inspector may for the purposes of this Act give a direction in writing under this section to a person at a petroleum site if, in the inspector's opinion —

30 (a) a contravention of this Act constitutes or is likely to constitute a hazard to a person at the site; or

cl. 27

(b) the site, or any plant, work practice or substance at or related to the site, constitutes or is likely to constitute a hazard to a person.

(2) A direction under this section may direct —

5 (a) that the contravention be remedied or the hazard or likely hazard be removed and may specify —

(i) the nature of the action that the inspector requires to be taken to remedy the contravention or remove the hazard or likely hazard; and

10 (ii) the time within which the action must be taken;

(b) that work at the site stop and that a person be removed from the site or a part of the site until the contravention has been remedied or the hazard or likely hazard has been removed,

15 and an inspector may give a direction either under paragraph (a) or under paragraphs (a) and (b).

(3) A direction under this section must specify the provision of the Act which, in the inspector's opinion, has been contravened, or the nature of the hazard or likely hazard, as is relevant to the case, and the reasons for the opinion.

(4) If an inspector gives a direction under this section to a person other than the operator of the petroleum site, the inspector must forthwith give the operator a copy of the direction.

25 Use and misuse of information by inspectors and assistants

27. (1) In this section —

“relevant person” means a person who —

(a) is, or was, an inspector; or

(b) assists, or has assisted, an inspector.

(2) A relevant person must not —

- 5 (a) use for a person's gain confidential knowledge or confidential information obtained by the relevant person in the course of or as a result of the relevant person's employment or period of appointment as an inspector or as a result of the person assisting an inspector (as is relevant to the case); or
- 10 (b) except in the proper performance of a function under this Act, intentionally or negligently disclose to a person information of a commercial nature concerning a petroleum site or a petroleum operation or information that is detrimental to or likely to be detrimental to the petroleum operation.

Penalty: \$10 000.

15 (3) A relevant person must not disclose to a person a report prepared by an inspector, including information in the report supplied by a person under the Act, concerning an accident at a petroleum site which either resulted in death or injury to a person or had the potential to cause fatal or serious disabling

20 injury to a person, unless the disclosure is made —

- (a) under or in connection with the administration of this Act;
- (b) to a court in accordance with a subpoena issued by the court; or
- 25 (c) in accordance with a requirement of another law.

Penalty: \$10 000.

(4) Despite subsections (2) and (3), a relevant person may —

- 30 (a) with the approval of the State Petroleum Director, disclose to a coroner a report of an investigation into a death or a suspected death occurring at a petroleum site; and

cl. 28

- (b) provide a coroner with information that —
- (i) the relevant person has grounds to believe to be accurate; and
 - (ii) appears likely to assist the coroner's investigation into a death or a suspected death occurring at a petroleum site.
- 5

Certificates of appointment

28. (1) The State Petroleum Director must provide each inspector with a certificate of appointment signed by the Director and an inspector must, if requested to do so, produce the certificate to a person in relation to whom the inspector is about to exercise, or has exercised, a power under this Act.

10

(2) A certificate purporting to have been provided under subsection (1) is, without proof of the signature of the person purporting to have signed it, or of the person's authority to have signed it, evidence in a court of the appointment to which the certificate purports to relate.

15

Provision of means of travel for inspection etc.

29. (1) A person who is —

- (a) the operator of a petroleum site;
- (b) the employer of an employee who works at a petroleum site; or
- (c) a self-employed person who works at a petroleum site,

must provide an inspector and a person accompanying the inspector under section 25 (3) with the means of travelling to or within the site for the purposes of an inspection, examination or inquiry under this Act.

20

25

Penalty: \$5 000.

(2) In subsection (1), a reference to travelling to a site is a reference to travelling from the nearest point to which a commercial passenger carrier (other than a private charterer) provides transportation.

5 Obstruction etc.

30. (1) A person must not —

- 10 (a) obstruct, hinder, or interfere with an inspector or a person accompanying an inspector under section 25 (3) who is lawfully acting in the performance of a function under this Act;
- (b) threaten, or use abusive or insulting language to, an inspector or a person accompanying an inspector under section 25 (3) who is lawfully acting in the performance of a function under this Act;
- 15 (c) contravene any requirement of an inspector made under this Act;
- (d) fail, without reasonable excuse, to comply in any respect with a request or direction made or given under this Act by an inspector; or
- 20 (e) impersonate an inspector or forge any document purporting to be a certificate of the appointment of any person as an inspector.

Penalty: \$5 000.

25 (2) A person must not, without reasonable excuse, fail to give an inspector performing a function under this Act access to a petroleum site, building, structure, plant, data or records, or other assistance which the person may reasonably be required to give under this Act.

Penalty: \$5 000.

cl. 31

(3) A person is not excused from complying with a requirement under this Act to answer a question on the ground that to do so might result in the person incriminating himself or herself or rendering himself or herself liable to a penalty, but an answer given by a person when so required is not admissible in evidence against the person in any civil or criminal proceedings other than proceedings for perjury or for an offence under this Act arising out of the false or misleading nature of the answer.

Penalty: \$5 000.

10 False or misleading answers and information

31. A person must not knowingly or recklessly in response to a request, requirement, direction or inquiry made by an inspector for the purposes of this Act, give an answer, make a statement, or furnish or cause to be furnished a report that is false or misleading in a material way because of —

- (a) the inclusion of false or misleading matter in the answer, statement or report; or
- (b) the omission from the answer, statement or report of matter that is required or may be material.

Penalty: \$5 000.

Compliance with inspector's directions

32. (1) This section applies if an inspector gives a direction under section 26.

(2) A person who is given a direction under section 26 must —

- (a) comply with the direction within the time specified in the direction;

- (b) if no time is specified in the direction, comply with the direction immediately; or
- (c) if the person intends to object to the direction in accordance with section 33 —
 - 5 (i) cease to use the petroleum site or part of the site, or the plant, work practice or substance to which the direction relates; and
 - (ii) withdraw all persons from the hazard or likely hazard indicated by the inspector until the
10 arbitration referred to in section 33 (2) is completed.

Penalty: \$10 000.

15 (3) Despite subsection (2), the State Petroleum Director or the inspector may permit —

- (a) work to proceed at the petroleum site; or
- (b) the plant, work practice or substance to be used,

20 subject to each restriction and condition that the Director or inspector imposes and specifies in writing in order to ensure the safety of persons at the site.

25 (4) If permission is given under subsection (3), the substance of the permission and a restriction or condition (if any) attached to the permission are to be recorded and the record is to be available at all reasonable times for the examination by any of the following persons —

- (a) an inspector;
- (b) a person who works at the site;
- (c) a person authorized in writing by the State Petroleum Director.

cl. 33

Objecting to inspector's directions

33. (1) A person who is given a direction under section 26 may, within 7 days after receiving the direction, deliver to the State Petroleum Director a written objection to the direction
5 specifying the grounds for the objection.

(2) If an objection is delivered under subsection (1) —

(a) the matter must then be determined by arbitration unless the State Petroleum Director first revokes the direction under section 34; and

10 (b) the date when the Director receives the objection is to be treated as the date of the submission to arbitration.

(3) A person who delivers an objection under subsection (1) must —

(a) keep a record of the objection;

15 (b) keep a record of the award (if any) made in respect of the objection after arbitration is completed; and

(c) allow a person affected by the direction to inspect a record referred to in paragraph (a) or (b).

Penalty applicable to subsection (3): \$5 000.

20 State Petroleum Director may revoke inspector's direction

34. The State Petroleum Director may, by notice in writing given to a person who has been given a direction under section 26, revoke the direction.

Arbitration concerning direction

5 **35.** (1) An arbitration under section 33 (2) is to be conducted in accordance with the *Commercial Arbitration Act 1985* as it applies to proceedings conducted before 2 arbitrators and an umpire.

(2) The parties to the arbitration are to be the person who objected to the direction and a safety inspector nominated by the Minister.

10 (3) A person is not eligible to act as an arbitrator or umpire if the person —

- (a) is or has been employed at the petroleum site to which the arbitration relates; or
- (b) has a financial interest in the petroleum site or plant or a substance to which the arbitration relates.

15 (4) A person who is appointed an umpire must be —

- (a) a person with extensive experience in petroleum operations in positions of responsibility;
- (b) a person with appropriate qualifications or expertise to deal with the issue in question;
- 20 (c) a Judge; or
- (d) a stipendiary magistrate.

(5) In an arbitration under section 33 (2) the arbitrators or the umpire may make an award confirming, varying or revoking the direction or giving a new direction.

25 (6) An award is not liable to be upset on the ground that an umpire was not qualified under subsection (4) to act.

cl. 36

(7) A person must not contravene an award made on an arbitration.

Penalty applicable to subsection (7): \$10 000.

Proceedings for offences for contravening directions or awards

5 **36.** If, in a proceeding for an offence against a person under section 32 (2) or section 35 (7), the safety and health magistrate is satisfied that the person has taken active measures to comply with the direction or award but has not fully complied despite
10 reasonable diligence, the safety and health magistrate may adjourn the proceeding and if full compliance occurs within a reasonable time must not enter a conviction.

Contracts and directions or awards

15 **37.** To the extent that a provision of a contract would preclude a person from, or make a person liable for, doing an act that is necessary to comply with a direction under section 26 or award made on an arbitration referred to in section 33 (2), the provision is of no effect.

PART 4 — SAFETY CASES

Safety case — a strategy for dealing with safety issues

5 **38.** (1) For the purposes of this Act, a safety case is a document containing information relevant to the identification, assessment, management and monitoring of matters, and other prescribed information, relevant to safety at a petroleum site.

(2) The main purposes of a safety case are to achieve, maintain and improve appropriate safety standards at the site.

Application

10 **39.** This Part does not apply to petroleum sites in the Commonwealth-State offshore area.

Note: The *Petroleum (Submerged Lands) (Management of Safety on Offshore Facilities) Regulations 1996* of the Commonwealth apply in relation to the Commonwealth-State offshore area.

15 **Certain work at petroleum sites to comply with, and not to begin without, relevant safety case**

40. (1) In this section —

20 “**prescribed circumstance**” means a circumstance of a kind for which a safety case is required under the regulations.

(2) The operator of a petroleum site must ensure —

25 (a) that no work is done at the site in relation to a prescribed circumstance unless a safety case in relation to the prescribed circumstance has been accepted by the State Petroleum Director in accordance with the regulations; and

cl. 41

- (b) that, subject to subsection (3), there is compliance with the safety case.

Penalty: \$8 000.

- 5 (3) Subsection (2) (b) does not apply to the extent to which the State Petroleum Director has in writing allowed the operator not to comply with a safety case.

Prescribed matters as to safety cases

41. Regulations may be made to make provision for, or in relation to —

- 10 (a) the circumstances in which a safety case is required, including the kinds of petroleum operation and the kinds of events for which a safety case is required;
- (b) the periods of time during which safety cases can have effect;
- 15 (c) the form and manner in which safety cases are to be submitted for acceptance;
- (d) the contents of safety cases;
- (e) the acceptance or rejection of safety cases submitted for acceptance;
- 20 (f) the records to be kept by the State Petroleum Director and by operators in relation to safety cases;
- (g) the reporting and reviewing of information relating to the contents of safety cases;
- (h) assessment of the operation of safety cases;

- (i) other matters that are necessary or convenient to be prescribed for giving effect to the purposes of this Part.

Consultation in preparation of safety case

- 5 **42.** (1) The operator of a petroleum site must ensure that in the development or revision of a safety case for the site there has been effective consultation with, and participation of, the classes of persons affected, or likely to be affected, by the subject matter of the safety case including, in particular, persons —
- 10 (a) who work or who will work at the site; and
- (b) who are identifiable before the safety case is developed or revised,

as is relevant to the case.

- 15 (2) The State Petroleum Director is not to accept a safety case unless it is accompanied by evidence satisfying the Director that there has been compliance with subsection (1) in relation to the safety case.

20 **Duties under this Part and regulations under this Part apply in addition to other duties under the Act (including regulations made under the Act)**

- 43.** A duty imposed on a person under this Part or by regulations made under this Part —
- 25 (a) does not affect the application of any other duty imposed on the person under this Act in connection with the same matter; and
- (b) applies even though any other duty is imposed on the person under this Act.

cl. 44

**PART 5 — SAFETY AND HEALTH REPRESENTATIVES
AND COMMITTEES**

Division 1 — Safety and health representatives

Functions of safety and health representatives

- 5 **44.** (1) The functions of a safety and health representative for
a petroleum site are, in the interests of the safety and health at
the site —
- 10 (a) to inspect the site (including a part of the site) —
- (i) at the times that are agreed with the operator of
the site; or
- (ii) if the representative has not inspected the
petroleum site (or the part of the site) in the
preceding 30 days, at any time upon giving
reasonable notice to the operator;
- 15 (b) to participate in an investigation in relation to an
accident, a dangerous occurrence, or a risk of
imminent and serious injury to, or imminent and
serious harm to the health of, a person, at the site;
- 20 (c) to keep informed as to the safety and health
information provided in accordance with this Act by a
person who is —
- (i) the operator of the site;
- (ii) the employer of an employee who works at the
site; or
- 25 (iii) a self-employed person who works at the site,
and liaise as necessary with the department and other
public sector and private bodies;

- (d) if a hazard or potential hazard to which a person is, or might be, exposed at the site comes to the representative's notice, to immediately report the matter to —
- 5 (i) the operator of the site; and
- (ii) the employer or self-employed person who has responsibility under this Act in relation to the hazard or potential hazard;
- 10 (e) if there is a safety and health committee for the site, to refer to the committee matters that the representative thinks the safety and health committee should consider;
- (f) to consult and cooperate with a person who is —
- (i) the operator of the site;
- 15 (ii) the employer of an employee who works at the site; or
- (iii) a self-employed person who works at the site,
- on all matters relevant to the person relating to the safety or health of persons at the site; and
- 20 (g) to liaise with —
- (i) the employers of employees who work at the site; and
- (ii) employees and self-employed persons who work at the site,
- 25 regarding matters concerning the safety or health of persons at the site.

cl. 45

(2) A safety and health representative for a petroleum site has the powers that are necessary for performing the representative's functions.

5 (3) Without limiting the generality of subsection (2), a safety and health representative may, if requested to do so by an inspector, accompany the inspector while the inspector is performing a function of the inspector at the site.

Notice requiring election of safety and health representative

10 **45.** (1) An employee who works at a petroleum site may give notice to his or her employer requiring the election of a safety and health representative to represent the employees of the employer who work at the site.

(2) Subsection (1) does not apply to a self-employed person.

15 Consultation on election matters

20 **46.** (1) An employer who is given notice under section 45 requiring the election of a safety and health representative must, within 21 days of being given the notice, invite the employees who work for the employer at the petroleum site that is the subject of the notice to appoint a delegate or delegates in accordance with subsection (3).

Penalty: \$5 000.

25 (2) The employer of employees who work at a petroleum site may, at any time, require the election of a safety and health representative to represent those employees by inviting them to appoint a delegate or delegates in accordance with subsection (3).

(3) The employees who are invited under subsection (1) or (2) to do so may appoint a delegate or delegates from amongst their number to represent them.

(4) An employer to whom subsection (1) or (2) applies must consult with the delegate or delegates, as is relevant to the case, appointed under this section on the matters which are required to be determined under this section.

5 Penalty: \$5 000.

(5) The matters which are required to be determined under this section in relation to an election are —

- 10 (a) the number of safety and health representatives to be elected to represent the employer's employees at the petroleum site;
- (b) whether training is to be agreed as being adequate for the purposes of section 47 (4) and, if so, what the training is to be; and
- 15 (c) the person by whom and the manner in which the election is to be conducted.

(6) If they wish to do so, the parties consulting under subsection (4) may request that an election to be held under this section be conducted by the Electoral Commissioner appointed under the *Electoral Act 1907*.

20 (7) A matter mentioned in subsection (5) that remains unresolved despite attempts to resolve it under subsection (4) may be referred to the State Petroleum Director who must, if unable to resolve the matter to the satisfaction of each of the parties concerned, refer the matter to a safety and health
25 magistrate for determination.

Election of safety and health representatives

47. (1) In this section —

30 “**election**” means an election for the purpose of electing a safety and health representative to represent the employees of the relevant employer;

cl. 47

“relevant employer” means the employer whose employees who work at a petroleum site are electing a safety and health representative to represent those employees at the site.

5 (2) Subject to this section, an election is to be conducted, and safety and health representatives are to be elected, in accordance with a determination under section 46.

10 (3) Each employee who works for the relevant employer at the petroleum site is entitled to vote at an election and the election must be by secret ballot.

(4) A person is not eligible to be elected as a safety and health representative for a petroleum site unless the person is employed by the relevant employer to work at the site and has —

15 (a) been continuously employed at the site during the preceding 2 years;

(b) had a total of at least 2 years’ experience at another petroleum site in work of a similar nature to the work the person does at the site;

20 (c) had a total of at least 12 months’ experience of a type described in paragraph (b) and the training, if any, that is agreed under section 46 as being adequate for the purposes of this subsection; or

25 (d) been approved by the State Petroleum Director for the purposes of this subsection.

(5) If only one eligible candidate is nominated for election to an office of safety and health representative, a ballot need not be held and the candidate is deemed to have been duly elected.

(6) The person conducting an election must notify —

30 (a) the relevant employer; and

(b) the operator of the petroleum site,
of the results of the election.

5 (7) If a question relating to an election arises, the matter may be referred by a person interested in the question to the State Petroleum Director who must, if unable to resolve the matter to the satisfaction of the persons concerned, refer the matter to a safety and health magistrate for determination.

Terms of office

10 **48.** (1) A person who is elected as a safety and health representative holds office, subject to this Act, for a term of 2 years.

(2) A person ceases to hold office as a safety and health representative if —

15 (a) the term of office of the person expires and the person is not re-elected;

(b) the person ceases to be an employee —

(i) who works at the petroleum site for which the person was elected; or

20 (ii) of the employer whose employees the person was elected to represent;

(c) the person resigns office by notice given to his or her employer; or

(d) the person is disqualified under section 49.

Disqualification of safety and health representatives

25 **49.** (1) A person specified in subsection (2) may refer to a safety and health magistrate the question of whether a safety

cl. 49

and health representative for a petroleum site should be disqualified on the ground that the representative —

- 5 (a) has done anything under this Act with the sole intention of causing harm to a person who is —
- (i) the operator of the site;
- (ii) the employer of an employee who works at the site; or
- (iii) a self-employed person who works at the site,
- 10 or a commercial or business undertaking of one of those persons;
- (b) has used or disclosed information acquired from a person who is —
- (i) the operator of the site;
- (ii) the employer of an employee who works at the site; or
- 15 (iii) a self-employed person who works at the site,
- 20 in the representative's capacity as a safety and health representative for a purpose that is not connected with the performance of the representative's functions with the intention of causing harm to one of those persons or a commercial or business undertaking of one of those persons; or
- (c) has failed to perform adequately a function of a safety and health representative,
- 25 or on more than one of those grounds.

(2) A reference under subsection (1) concerning the disqualification of a safety and health representative for a petroleum site may be made by —

(a) a person who is —

- 5
- (i) the operator of the site;
 - (ii) the employer of an employee who works at the site;
 - (iii) a self-employed person who works at the site; or
 - (iv) an employee who works at the site;

10 or

(b) the State Petroleum Director.

(3) If, upon a reference under subsection (1), a safety and health magistrate is satisfied that grounds for the disqualification of the safety and health representative exist, the safety and health magistrate may disqualify the representative for a specified period or permanently from holding office as a safety and health representative.

(4) In determining what disqualification, if any, should be imposed under subsection (3) on a safety and health representative for a petroleum site, a safety and health magistrate must take into account —

(a) the harm, if any, caused to a person who is —

- 25
- (i) the operator of the site;
 - (ii) the employer of an employee who works at the site; or

cl. 50

- (iii) a self-employed person who works at the site,
or a commercial or business undertaking of one of those persons;
- 5 (b) the past record of the representative in performing the functions of a safety and health representative; and
- (c) whether the representative acted contrary to the public interest,

and may take into account other matters that the safety and health magistrate considers relevant.

10 Operator to ensure safety of safety and health representative during inspections

50. The operator of a petroleum site must ensure that whenever a safety and health representative is inspecting the petroleum site under section 44 (1) (a), a suitably experienced
15 person has been given responsibility for ensuring the safe conduct of the representative through the petroleum site.

Penalty: \$5 000.

Duties of employers, self-employed persons and the operator regarding safety and health representatives

- 20 **51.** (1) This section applies in relation to a petroleum site if there is at least one safety and health representative for the site.
- (2) A person who is —
 - (a) the operator of a petroleum site;
 - 25 (b) the employer of an employee who works at a petroleum site; or

(c) a self-employed person who works at a petroleum site,
must make available to each safety and health representative for
the site the information that the person has, or could reasonably
be expected to have, relating to —

- 5 (d) a hazard to a person that arises or may arise at the
site;
- (e) so far as it is relevant to a hazard mentioned in
paragraph (d), the plant and substances used at the
site and the systems of work at the site; and
- 10 (f) the safety and health of persons who work at the site,

but nothing in this subsection requires a person to make
available information by which a trade secret would be disclosed.

(3) If —

- 15 (a) an employee who works at a petroleum site is required
to attend an interview concerning safety or health
between —
- (i) the employee's employer;
- (ii) the operator of the site;
- (iii) a self-employed person who works at the site; or
- 20 (iv) a representative of a person referred to in
subparagraph (i), (ii) or (iii);
- and
- (b) the employee requests the presence at the interview of
a safety and health representative whose function is to
25 represent the employee,

the person referred to in paragraph (a) (i), (ii), (iii) or (iv), as is
applicable to the case, must permit the safety and health
representative to be present at the interview.

cl. 51

(4) A person who is —

- (a) the operator of a petroleum site;
- (b) the employer of an employee who works at a petroleum site; or

5 (c) a self-employed person who works at a petroleum site,

must consult with a safety and health representative on an intended change to the site or to the plant or a substance used at the site if the change may reasonably be expected to affect the safety or health of a person who works at the site.

10 (5) The employer of a safety and health representative must permit the representative to take time off work with pay and other benefits, in accordance with regulations made under section 53, for the purposes of —

- 15 (a) performing a function of a safety and health representative; or
- (b) attending a training course in safety and health approved by the State Petroleum Director.

20 (6) If an accident or dangerous occurrence takes place in a part of the petroleum site where employees who are represented by a safety and health representative work, the employer of the representative must ensure that the representative is notified without delay of the accident or occurrence.

25 (7) The employer of a safety and health representative must provide the representative with the facilities that are necessary or prescribed for the purposes of the performance by the representative of his or her functions.

(8) A person who is —

- (a) the operator of a petroleum site;

(b) the employer of an employee who works at a petroleum site; or

(c) a self-employed person who works at a petroleum site,

5 must provide the assistance that is necessary or prescribed for the purposes of the performance by a safety and health representative for the site of the representative's functions.

Penalty applicable to subsections (2), (3), (4), (5), (6), (7) and (8): \$5 000.

Medical information about employees to be confidential

10 **52.** The employer of an employee who works at a petroleum site must not make medical information concerning the employee available to a safety and health representative for the site unless —

15 (a) the employee has consented to the employer doing so; or

(b) the information is in a form that does not identify, or does not enable the identification of, the employee.

Penalty: \$5 000.

20 **Regulations regarding time off work for safety and health representatives**

53. (1) The regulations may prescribe the time that a safety and health representative is to be permitted to take off work, with pay and other benefits, for the purposes of —

25 (a) performing a function of a safety and health representative; and

cl. 54

- (b) attending a training course in safety and health approved by the State Petroleum Director.

5 (2) The time that a safety and health representative is to be permitted to take off work, with pay and other benefits, for the purposes referred to in subsection (1) may be varied, in a way not less favourable to the representative than that prescribed in the regulations —

- (a) by agreement with the representative's employer; or
- 10 (b) by a determination made by a safety and health magistrate upon a reference made to the safety and health magistrate under this section by the representative's employer, the representative, or the State Petroleum Director.

Division 2 — Safety and health committees

15 Functions of safety and health committees

54. The functions of a safety and health committee for a petroleum site are —

- (a) to facilitate consultation and cooperation between each person who is —
 - 20 (i) the operator of the site;
 - (ii) the employer of an employee who works at the site;
 - (iii) a self-employed person who works at the site; or

- (iv) an employee who works at the site,
in initiating, developing, and implementing measures designed to ensure the safety and health of persons who work at the site;
- 5 (b) to keep itself informed as to standards relating to safety and health generally recommended or prevailing in petroleum sites of a comparable nature;
- (c) to review rules and procedures at the site relating to the safety and health of persons who work at the site
10 and to make recommendations about the rules and procedures;
- (d) to recommend to a person who is —
- (i) the operator of the site;
- (ii) the employer of an employee who works at the
15 site;
- (iii) a self-employed person who works at the site; or
- (iv) an employee who works at the site,
the establishment, maintenance, and monitoring of
20 programmes, measures and procedures at the site relating to the safety and health of persons who work at the site;
- (e) to keep in a readily accessible place and form the information that is provided under this Act regarding the hazards to persons that arise or may arise at the
25 site;
- (f) to consider a change or intended change to or at the site that may reasonably be expected to affect the safety or health of a person who works at the site and make recommendations in respect of the change or
30 intended change;

cl. 55

- (g) to consider a matter that is referred to the committee by a safety and health representative;
- (h) to perform other functions that may be prescribed in the regulations; and
- 5 (i) to perform other functions that may be given to the committee, with its consent, by a person who is —
 - (i) the operator of the site;
 - (ii) the employer of an employee who works at the site; or
 - 10 (iii) a self-employed person who works at the site.

Request for safety and health committee to be established

15 **55.** (1) A safety and health representative for a petroleum site at which more than 10 employees work may request the operator of the site to establish a safety and health committee for the site.

(2) If the operator of a petroleum site has been requested under subsection (1) to establish a safety and health committee, the operator must, within 21 days of the request —

- 20 (a) notify the requesting representative that the request is agreed to; or
- (b) if the operator considers that in the circumstances of the case a safety and health committee should not be required to be established under this Act —
 - 25 (i) refer to the State Petroleum Director the question of whether a committee should be established; and

- (ii) inform the requesting representative that the matter has been referred to the Director.

Penalty: \$5 000.

- 5 (3) The State Petroleum Director must as soon as is practicable decide a question referred under subsection (2) and notify the operator and the requesting representative of the decision.

Establishment of safety and health committee

- 10 **56.** (1) The operator of a petroleum site must, in accordance with this Division and the regulations, establish a safety and health committee within 3 months of —

- (a) the coming into operation of a regulation requiring a committee to be established by the operator;
- 15 (b) service on the operator of a notice from the State Petroleum Director requiring the operator to do so; or
- (c) being requested under section 55 to do so,

unless, in the case mentioned in paragraph (c), the State Petroleum Director has decided that a safety and health committee is not required to be established.

20 Penalty: \$5 000.

- (2) The operator of a petroleum site may, of the operator's own initiative, establish a safety and health committee at any time and the committee is to be established in accordance with this Division.

cl. 57

Composition of safety and health committee

57. (1) A safety and health committee for a petroleum site is to consist of —

- 5 (a) the operator of the site or the operator's representative;
 - (b) in respect of each employer of employees who work at the site — at least one of the safety and health representatives, if any, who represent those employees;
 - 10 (c) if there is no safety and health representative representing the employees of a particular employer, the person or persons elected by the employer's employees for the purposes of this section;
 - 15 (d) in respect of each employer of employees who work at the site — the person or persons appointed for the purposes of this section by the employer (who may include the employer himself or herself); and
 - 20 (e) the person or persons appointed for the purposes of this section by the self-employed persons who work at the site (who may include any of the self-employed persons themselves).
- (2) Subject to subsections (4) and (5) —
- 25 (a) the number of persons to be elected by the employees of an employer referred to in subsection (1) (c) is to be as is substantially agreed between the employer, the operator of the site and those employees;
 - (b) the number of persons to be appointed by each employer is to be —
 - 30 (i) as is agreed between the employer, the operator of the site and each of the safety and health representatives who represent the employer's employees who work at the site; or

(ii) if there is no safety and health representative representing an employer's employees who work at the site, as is substantially agreed between the employer, the operator and those employees;

5 and

(c) the number of persons to be appointed by the self-employed persons at the site is to be as is substantially agreed between those persons and the operator of the site.

10 (3) If there is —

(a) in the State Petroleum Director's opinion, failure to substantially agree a matter under subsection (2) (a), (b) (ii) or (c), the number of persons to be elected or appointed in relation to the respective provision for the purposes of this section is to be as decided by the Director; or

(b) failure to agree the matter under subsection (2) (b) (i), the number of persons to be appointed by the employer for the purposes of this section is to be as decided by the State Petroleum Director.

(4) At least half of the members of a safety and health committee for a petroleum site must be safety and health representatives for the site or, if there are no safety and health representatives, persons elected by employees who work at the site.

(5) A person is not eligible for election or appointment as a member of a safety and health committee for a petroleum site unless the person works, or employs an employee who works, at the site.

cl. 58

(6) A person who is appointed to a safety and health committee for a petroleum site by an employer or a self-employed person must have the authority to give effect to the matters that the committee might reasonably resolve in connection with the safety and health of persons who work at the site.

(7) An election for the purposes of this section is to be by secret ballot.

Review of State Petroleum Director's decision

58. (1) A person who is —

- (a) the operator of a petroleum site;
- (b) the employer of an employee who works at a petroleum site;
- (c) a self-employed person who works at a petroleum site;
- (d) an employee who works at a petroleum site; or
- (e) a safety and health representative for a petroleum site,

may refer to a safety and health magistrate for review a decision of the State Petroleum Director as to —

- (f) whether it would be appropriate for a safety and health committee to be established for the site; or
- (g) the number of persons to be elected or appointed to a safety and health committee.

(2) A safety and health magistrate may confirm, vary or revoke a decision of the State Petroleum Director referred under subsection (1).

Procedure of safety and health committees

59. (1) Subject to subsection (2) and to the regulations, a safety and health committee may determine its own procedure.

5 (2) Each safety and health committee must meet at intervals not exceeding 3 months.

Division 3 – Discrimination

Discrimination

10 60. (1) An employer or prospective employer must not in any way treat an employee who works at, or a prospective employee who will work at, a petroleum site less favourably than the employer or prospective employer otherwise would have done because the employee or prospective employee —

- 15 (a) is or has been a safety and health representative or a member of a safety and health committee;
- 20 (b) performs or has performed a function as a safety and health representative or a member of a safety and health committee;
- 25 (c) gives or has given assistance or information to an inspector, safety and health representative or any member of a safety and health committee; or
- (d) makes or has made a complaint in relation to safety or health to a person who is or was his or her employer or fellow employee, an inspector, a safety and health representative, a member of a safety and health committee, the operator of a petroleum site or a self-employed person who works at a petroleum site.

Penalty: \$5 000.

cl. 60

(2) A trade union must not in any way treat a person less favourably than it otherwise would have done because of the manner in which the person performs or has performed a function as a safety and health representative or a member of a
5 safety and health committee.

Penalty: \$5 000.

PART 6 — DEALING WITH SAFETY AND HEALTH

Resolution of issues at the petroleum site

5 **61.** (1) If an issue relating to safety or health arises in relation to a petroleum site, the employer or self-employed person concerned, or where the employer or self-employed person concerned is not at the site, the operator of the site must, in accordance with the relevant procedure, attempt to resolve the issue with —

- 10 (a) each safety and health representative for the site who is concerned with the issue;
- (b) the safety and health committee for the site;
- (c) each employee who works at the site who is concerned with the issue;
- 15 (d) each employer of employees who work at the site who is concerned with the issue; or
- (e) each self-employed person who works at the site who is concerned with the issue,

whichever is specified in the relevant procedure.

Penalty: \$5 000.

20 (2) For the purposes of subsection (1) —

“the relevant procedure” means the procedure agreed between the operator of the site and each person who is —

- 25 (a) the employer of an employee who works at the site;
- (b) an employee who works at the site; or

cl. 62

(c) a self-employed person who works at the site,

as applying in respect of the site or, if no procedure is so agreed, the procedure prescribed for that purpose in the regulations.

5 (3) If attempts to resolve an issue as mentioned in subsection (1) do not succeed and there is both a safety and health representative concerned and a safety and health committee for the site, the representative must refer the issue to the committee for it to attempt to resolve the issue.

10 Penalty: \$5 000.

Inspector may be notified if issue unresolved

15 **62.** (1) If attempts to resolve an issue in accordance with section 61 are unsuccessful, and if there is a risk of imminent and serious injury to or imminent and serious harm to the health of a person, a person who is —

- (a) the operator of the site;
- (b) the employer of an employee who works at the site;
- (c) a self-employed person who works at the site;
- (d) an employee who works at the site; or

20 (e) a safety and health representative for the site,

may notify a safety inspector of the unresolved issue.

(2) A safety inspector, upon being notified of an unresolved issue under subsection (1), must attend without delay at the site and either —

- 5 (a) take action under this Act, including action under section 26, considered by the inspector to be appropriate; or
- (b) determine that in the circumstances no action is required to be taken under this Act.

Refusal by employee to work in certain cases

10 **63.** (1) Nothing in section 62 prevents an employee who works at a petroleum site from refusing to work at the site if the employee has reasonable grounds to believe that to continue to work would expose the employee or another person to a risk of imminent and serious injury or imminent and serious harm to
15 the health of the employee or another person.

(2) An employee does not have reasonable grounds for the belief referred to in subsection (1) if a safety inspector has attended the site upon being notified under section 62 (1) of the risk and —

- 20 (a) the measures, if any, required by the safety inspector to be taken to remedy the matters giving rise to the risk have been taken;
- (b) the requirements, if any, of the safety inspector to remedy the matters giving rise to the risk have ceased
25 to have effect; or
- (c) the safety inspector has determined that no action is required to be taken under this Act.

cl. 64

(3) An employee who refuses to work as mentioned in subsection (1) must immediately notify —

- (a) his or her employer; and
- 5 (b) the safety and health representative, if any, who represents the employer's employees who work at the site,

and the matter is to be treated as an issue to which section 61 (1) applies.

Penalty: \$5 000.

- 10 (4) An employee who refuses to work as mentioned in subsection (1) must not leave the site until the employee has notified his or her employer under subsection (3) and the employer has authorized the employee to leave the site.

Penalty: \$5 000.

- 15 (5) Subsection (4) does not apply if the employee has reasonable grounds to believe that to remain at the site would expose the employee to a risk of imminent and serious injury or imminent and serious harm to his or her health.

Assignment of other work

- 20 **64.** An employee who refuses to work as mentioned in section 63 (1) may be given reasonable alternative work to do until the employee resumes his or her usual work.

Entitlements to continue

- 25 **65.** (1) An employee who refuses to work as mentioned in section 63 (1) is entitled to receive the same pay and other benefits, if any, which the employee would have been entitled to receive if the employee had continued to do his or her usual work.

- (2) Subsection (1) does not apply if —
- (a) the employee leaves the site without the authorization of the employer required under section 63 (4); or
 - (b) the employee refuses to do reasonable alternative work that the employee is given under section 64.
- 5
- (3) A dispute arising as to —
- (a) whether a person is entitled to pay and other benefits; or
 - (b) what pay or benefits a person is entitled to receive,
- 10 in accordance with subsection (1), may be referred by a party to the dispute to a safety and health magistrate for determination.

Offences — refusal to work

66. (1) In this section —
- 15 “disentitled employee” means an employee who refuses to work for a period —
- (a) on the grounds that to do so would involve a risk of injury or harm to the health of a person; or
 - (b) on the grounds that another employee refuses to work because to do so would involve a risk of
- 20 injury or harm to the health of a person,
- but does not include a person who has refused to work as mentioned in section 63 (1) and who is entitled to pay and other benefits under section 65 (1).
- (2) An employee must not accept from his or her employer,
- 25 in respect of a period during which the employee is a disentitled employee, any pay or other benefits to which the employee would have been entitled if the employee had continued to work.

Penalty: \$5 000.

cl. 66

(3) An employer must not pay or provide to an employee, in respect of a period during which the employee is a disentitled employee, any pay or other benefits to which the employee would have been entitled if the employee had continued to work.

5 Penalty: \$5 000.

(4) In subsections (2) and (3) a reference to pay and other benefits does not include a reference to any payment or benefit prescribed for the purposes of this section.

10 (5) This section has effect despite any provision of another written law, including the *Industrial Relations Act 1979*, an order, award or agreement made or approved under that Act and an agreement registered or approved under the *Workplace Agreements Act 1993*.

**PART 7 — SPECIFIC MATTERS RELATING TO SAFETY
AND HEALTH**

Division 1 — Health surveillance

Health surveillance of employees

- 5 **67.** (1) The State Petroleum Director may, by notice in writing served on an employer require the employer —
- (a) to establish and maintain a system for the surveillance of the health of the employer's employees in accordance with the notice; and
 - 10 (b) to provide information, in accordance with the notice, to the Director on the surveillance of the health of the employer's employees.
- (2) An employer must not contravene a requirement in a notice served under subsection (1).
- 15 Penalty: \$5 000.
- (3) A notice may provide that the requirement in the notice does not apply to a category of employees specified in the notice.

Division 2 — Reporting, records and accident sites

Application

- 20 **68.** This Division does not apply to petroleum sites in the Commonwealth-State offshore area.

Note: The *Petroleum (Submerged Lands) (Management of Safety on Offshore Facilities) Regulations 1996* of the Commonwealth apply in relation to the Commonwealth-State offshore area.

cl. 69

Reporting accidents and diseases

69. (1) If an employee who works at a petroleum site dies or suffers serious injury in, or as a result of, an accident at the site, the employee's employer must, as soon as practicable after the
5 accident occurs, report the accident to the operator of the site.

Penalty: \$5 000.

(2) If a person dies or suffers serious injury in, or as a result of, an accident at a petroleum site, the operator of the site must, as soon as practicable after the accident occurs —

- 10 (a) report the accident in accordance with the regulations to a safety inspector;
- (b) if the injured person so requests, report the accident in accordance with the regulations to the secretary or local representative of a trade union of which the
15 person is a member; and
- (c) provide a written report of the accident in accordance with the regulations to the State Petroleum Director.

Penalty: \$5 000.

20 (3) If, at a petroleum site, an employee who works at the site is affected, as a result of the work, by a disease that —

- (a) results in the death of the employee; or
- (b) is of a kind prescribed in the regulations for the purposes of this subsection,

25 the employee's employer must forthwith notify the State Petroleum Director in the prescribed form giving the particulars that may be prescribed.

Penalty: \$5 000.

Reporting certain occurrences

70. (1) In this section —

“**occurrence**” means an occurrence of —

5 (a) accidental escape or ignition of petroleum or other flammable or combustible material which, in the relevant person’s opinion, had the potential to cause serious injury or serious harm to health; or

(b) serious property damage;

10 “**relevant person**” means a person who is the operator of a petroleum site or a person who has knowledge of the occurrence in question and who is —

(a) the employer of an employee who works at the site; or

15 (b) a self-employed person who works at the site.

(2) If there is an occurrence at a petroleum site, whether or not bodily injury to a person or damage to property has resulted from the occurrence, each relevant person must ensure that, as soon as practicable after the occurrence —

20 (a) the occurrence is reported in accordance with the regulations to a safety inspector; and

(b) a written report of the occurrence is provided in accordance with the regulations to the State Petroleum Director.

25 Penalty: \$5 000.

cl. 71

Reporting potentially hazardous events

71. (1) In this section —

5 “**potentially hazardous event**” means an event which is not in the normal or ordinary course of a particular petroleum operation and which, in the relevant person’s opinion, had the potential to cause serious injury or serious harm to a person or serious property damage;

10 “**relevant person**” means a person who is the operator of a petroleum site or a person who has knowledge of the hazard in question and who is —

(a) the employer of an employee who works at the site; or

(b) a self-employed person who works at the site.

15 (2) If a potentially hazardous event occurs at a petroleum site, whether or not bodily injury to a person or damage to property has resulted from the event, each relevant person must ensure that, as soon as practicable after the event —

20 (a) the event is reported in accordance with the regulations to a safety inspector; and

(b) a written report of the event is provided to the State Petroleum Director specifying measures taken or to be taken to prevent a possible recurrence.

Penalty: \$5 000.

25 **Accident records**

72. (1) The operator of a petroleum site must —

(a) cause to be kept at the site a record of each accident at the site that affects the safety or health of a person (“**the accident record**”);

- (b) ensure that —
 - (i) the accident record is kept safely and is legible or capable of being produced in a legible form; and
 - 5 (ii) the accident record is kept at the site for as long as a petroleum operation continues at the site; and
- (c) after the occurrence of an accident at the site resulting in death or serious injury to a person, cause prescribed details of the accident to be entered without delay in the accident record.

10

Penalty: \$5 000.

- (2) The operator of a petroleum site must ensure that the accident record is kept open at all reasonable times for the examination of —

15

- (a) an inspector;
- (b) a safety and health representative for the site;
- (c) a representative of a trade union which has a member who is employed at the site; and
- 20 (d) a person authorized by the State Petroleum Director.

Penalty: \$5 000.

- (3) The operator of a petroleum site must, not later than 15 days after the end of each month, cause to be provided to the State Petroleum Director a copy of the details entered in the accident record relating to each accident that occurred during the month other than an accident requiring no medical treatment or only basic first aid treatment.

25

Penalty: \$5 000.

cl. 73

(4) The person who was the operator of a petroleum site immediately before the time when a petroleum operation is abandoned or suspended at the site —

5 (a) must ensure that each accident record required to be kept under this Act in respect of the site is kept for a period of 7 years from the time of abandonment or suspension of the petroleum operation; or

10 (b) must, if it is likely that the person will go into liquidation or receivership, take steps to ensure that each accident record required to be kept under this Act in respect of the site is kept for the period referred to in paragraph (a).

Penalty: \$5 000.

Place of accident not to be disturbed

15 **73.** (1) A person must not disturb a place at a petroleum site where an accident which caused death or serious injury has occurred unless —

(a) the disturbance is necessary to save life or prevent injury to a person; or

20 (b) the person has the permission of a safety inspector to do so.

(2) Subsection (2) does not apply if a coroner or coroner's investigator has restricted access, under section 32 of the *Coroners Act 1996*, to a place at a petroleum site where a death
25 occurred.

Penalty: \$5 000.

PART 8 — MINISTERIAL SAFETY AND HEALTH POWERS

Interpretation

5 74. A reference in this Part to the State includes a reference to the State coastal waters and the Commonwealth-State offshore area.

Petroleum Safety Advisory Board

10 75. (1) There is to be established a Board, to be known as the Petroleum Safety Advisory Board, which in accordance with this Part and the regulations is to provide advice to the Minister on safety and health in the petroleum industry in the State.

(2) The Minister may in accordance with the regulations appoint persons who the Minister thinks are appropriate to be members of the Board including —

- 15 (a) representatives of the department and other departments of the Public Service of the State;
- (b) persons representing management of the petroleum industry in the State; and
- 20 (c) persons representing employee groups or organizations of persons working in the petroleum industry in the State.

(3) Members of the Board are entitled to be paid the remuneration and travelling and other allowances that the Minister determines on the recommendation of the Minister for Public Sector Management.

cl. 76

Board's functions and procedure

76. (1) The functions of the Board are —
- 5 (a) to advise and make recommendations to the Minister on safety and health matters concerning the petroleum industry in the State;
 - (b) to inquire into and report to the Minister regarding matters referred to the Board by the Minister relating to safety and health in the petroleum industry in the State;
 - 10 (c) to make recommendations to the Minister regarding the formulation, amendment, or repeal of laws for which the Minister is responsible relating to safety and health;
 - 15 (d) for the purposes of maintaining appropriate standards of safety and health in the petroleum industry, to prepare or recommend the adoption of codes of practice, guidelines, standards, specifications or other forms of guidance for the purpose of assisting persons who have a duty of care under this Act;
 - 20 (e) to advise the Minister on education, training and training courses with respect to safety and health in the petroleum industry;
 - 25 (f) to advise the Minister on publications concerning safety and health which are relevant to the petroleum industry; and
 - (g) to liaise with —
 - (i) the WorkSafe Western Australia Commission established under the *Occupational Safety and Health Act 1984*;

- 5
- (ii) the Mines Occupational Safety and Health Advisory Board established under the *Mines Safety and Inspection Act 1994*;
 - (iii) the Director of Energy Safety referred to in section 5 of the *Energy Coordination Act 1994*; or
 - (iv) a corresponding or related national or international body,

to coordinate activities on related functions and maintain parallel standards.

- 10 (2) Except as provided in the regulations, the Board may determine its own procedure.

Minister may publish report

- 15 **77.** The Minister may cause a report prepared for the purposes of this Act by or on behalf of the State Petroleum Director or an inspector to be published at the time and in the manner that the Minister thinks appropriate.

Delegation of ministerial functions

- 20 **78.** (1) The Minister may, by instrument in writing, delegate to a person, either generally or as otherwise provided in the instrument, a power or duty that the Minister has under this Act, other than this power of delegation.

(2) Anything done by a delegate under a delegation under this section has the same force and effect as if it had been done by the Minister.

25 **Codes of practice**

- 79.** (1) The Minister may approve a code of practice which has been considered by the Board, for the purpose of providing practical guidance to persons who have a duty of care under this Act.

cl. 79

(2) A code of practice may consist of a code, standard, rule, specification or provision relating to safety or health that is prepared by an appropriate body and may incorporate by reference another document of that kind either as it is in force at
5 the time the code of practice is approved or as it may from time to time subsequently be amended.

(3) The Minister may approve the revision of the whole or a part of a code of practice or revoke the approval of a code of practice.

10 (4) The Minister is to cause to be published in the *Gazette* notice of each approval or revocation under this section and the approval or revocation comes into force on the publication day.

(5) The Minister is to cause a copy of —

(a) each code of practice;

15 (b) each document incorporated by reference in a code of practice; and

(c) each revision or revocation of a code of practice,

20 to be laid before each House of Parliament within 14 sitting days of the House and to be made available, without charge, for public inspection.

(6) Where it is alleged in a proceeding under this Act that a person has 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 —

25 (a) the code of practice is admissible in evidence in the proceeding; and

30 (b) demonstration that the person complied with the provision of the Act or regulations whether or not by observing a provision of the code of practice is a satisfactory defence.

(7) A person is not liable to a civil or criminal proceeding only because the person has not complied with a provision of a code of practice.

cl. 80

PART 9 — LEGAL PROCEEDINGS

Jurisdiction of safety and health magistrate

80. (1) If under this Act —

5 (a) a matter is capable of being referred to a safety and health magistrate, the matter may be heard and determined as if it were a matter in which jurisdiction were conferred on the safety and health magistrate by the *Occupational Safety and Health Act 1984*; or

10 (b) a proceeding for an offence is to be heard and determined by a safety and health magistrate, the proceeding may be heard and determined as if it were a proceeding in which jurisdiction were conferred on the safety and health magistrate by the *Occupational Safety and Health Act 1984*,

15 and that Act, so far as it is capable of applying, is to extend to the exercise of the jurisdiction of a safety and health magistrate in those matters and proceedings accordingly.

(2) A decision of a safety and health magistrate on a matter referred under this Act has effect according to its substance.

20 **Offence proceedings to be determined by safety and health magistrate**

81. Each proceeding for an offence under this Act is to be heard and determined by a safety and health magistrate.

Proceedings to be taken by inspector or authorized officer

25 **82.** (1) Each proceeding for an offence under this Act may be instituted and conducted —

(a) subject to section 25 (2) (b), by an inspector; or

- (b) by a public service officer authorized in writing for the purpose by the Minister.

5 (2) An inspector or public service officer is not to be personally responsible for costs incurred by or awarded against the inspector or officer in connection with a proceeding for an offence under this Act.

Time limit for prosecutions

10 **83.** (1) Subject to subsection (2), each proceeding for an offence under this Act must be commenced within 12 months after the offence was committed.

(2) A proceeding for an offence under section 19 must be commenced within 2 years after the offence was committed.

Evidentiary provisions

15 **84.** (1) In a proceeding for an offence under this Act, an averment in the complaint that at a particular time —

- (a) an activity was a petroleum operation;
- (b) a particular place was a petroleum site;
- (c) a particular person was —
 - 20 (i) a title holder for a petroleum site;
 - (ii) the operator of a petroleum site;
 - (iii) the employer of an employee who worked at a petroleum site;
 - (iv) a self-employed person, or an employee, who worked at a petroleum site;

cl. 84

- 5
- (d) a particular person was a safety and health representative, or a member of a safety and health committee, for a petroleum site;
 - (e) a particular person was an inspector or a person accompanying an inspector under section 25 (3);
 - (f) a notice required or authorized under this Act to be given was given or had not been given;
 - (g) a direction was given by an inspector;
 - (h) a prescribed fee had not been paid,

10 is deemed to have been proved unless the contrary is proved.

(2) In a proceeding for an offence under this Act, proof is not required as to any of the following matters, unless the contrary is proved —

- 15
- (a) a delegation by the Minister to the State Petroleum Director or by that Director to a person for a particular purpose or to do a particular act;
 - (b) the authority of a special inspector or a public service officer to institute and conduct a proceeding for an offence under this Act;
 - 20 (c) the authority of a public service officer to sign a certificate under subsection (3) or (4).

(3) In a proceeding in which it is necessary or expedient to prove —

- 25
- (a) the contents of a notice, direction or other document required or authorized under this Act; or
 - (b) the service of a notice, direction or other document required or authorized under this Act,

the contents or the service of the notice, direction or other document may be sufficiently proved by the production of a

5 purported copy of the notice, direction or document bearing a certificate signed by a public service officer authorized by the State Petroleum Director to the effect that the copy is a true copy of the original or that the original was served in the manner set out in the certificate, as the case requires.

10 (4) In a proceeding in which it is necessary or expedient to prove the contents of a safety case at a particular time, the contents or a relevant part of the contents may be sufficiently proved by the production of a purported copy of the safety case or the relevant part of the safety case bearing a certificate signed by a public service officer authorized by the State Petroleum Director to the effect that the copy is a true copy of the copy of the safety case or relevant part of the safety case kept by the Director.

15 **Vicarious responsibility of operators and employers**

85. If an offence under this Act is committed by a person and —

20 (a) the operator of, or the employer of an employee who works at, a petroleum site is proved knowingly to have permitted or employed the person to commit the offence; or

(b) the offence is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of —

25 (i) the operator of, or the employer of an employee who works at, a petroleum site; or

(ii) a person who was purporting to act in any of those capacities,

30 then the persons who are referred to in paragraphs (a) and (b) as well as the person who committed the offence commit the offence and all those persons are severally liable to conviction.

cl. 86

Offences by corporations

86. (1) If an offence under this Act is committed by a corporation and the offence is proved to have been committed with the consent or connivance of, or to be attributable to neglect
5 on the part of —

(a) a director, manager, secretary or other officer of the corporation; or

(b) a person who was purporting to act in any of those capacities,

10 then the persons who are referred to in paragraphs (a) and (b) as well as the corporation, commit the offence and all those persons and the corporation are severally liable to conviction.

(2) If the affairs of a corporation are managed by its members then subsection (1) applies in relation to the acts and
15 defaults of a member in connection with the member's functions of management as if the member were a director of the corporation.

Continuing offences

87. (1) If an offence is committed by a person by way of
20 contravention of a provision of this Act under which the person is required or directed to do an act or thing, or to refrain from doing an act or thing, the offence is deemed to continue so long as the act or thing so required or directed remains undone, or continues to be done, as the case may be.

25 (2) If an offence is deemed to continue, the person who committed the offence, whether by act or omission, commits an additional offence on each day during which the offence is deemed to continue and is liable to a fine not exceeding \$200 for each day on which the offence is so continued.

PART 10 — MISCELLANEOUS

Protection from liability

88. (1) A person who is or was —

- 5
- (a) the State Petroleum Director or a delegate of that Director;
 - (b) an inspector;
 - (c) a member of the Board; or
 - (d) a safety and health representative,

is a protected person for the purposes of this section.

10 (2) An action in tort does not lie against a protected person for anything that the person has, in good faith, done in the performance or purported performance of a function under this Act.

15 (3) The protection given by this section applies even though the thing done in the performance or purported performance of a function under this Act may have been capable of being done whether or not this Act had been enacted.

(4) In this section a reference to the doing of anything includes a reference to the omission to do anything.

20 False or misleading entries in records

89. A person must not knowingly or recklessly make an entry in a record that is false or misleading in a material way because of —

- 25
- (a) the inclusion of false or misleading matter in the record; or

cl. 90

- (b) the omission from the record of matter that is required or may be material.

Penalty: \$5 000.

Regulations

5 **90.** (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed, for giving effect to the purposes of this Act, and in particular, may make regulations with respect to the matters set out in
10 Schedule 1.

(2) A reference in section 43 of the *Interpretation Act 1984* to “the State” includes, for the purposes of regulations made under this Act, a reference to the State coastal waters and the Commonwealth-State offshore area.

15 (3) Regulations made under this Act may create offences and may provide for penalties not exceeding \$5 000 and, if the offence is a continuing one, for a further penalty not exceeding \$200 for each day or part of a day during which the offence continues after notice of the offence has been given by or on behalf of an
20 inspector to the offender.

(4) Regulations prescribing the maximum levels of radiation to which persons may be exposed at a petroleum site are not to be made under this Act without the approval of the Radiological Council established under the *Radiation Safety Act 1975*.

25 (5) Regulations made under this Act may adopt either wholly or in part and either specifically or by reference, a standard, rule, code or specification of the Standards Association of Australia, or of an Australian or international body of well established high repute.

Publication of regulations at petroleum site

91. In order to make the provisions of all the regulations applicable to a petroleum site known to all persons working at the site, the operator of the site —

- 5 (a) must cause a correct copy in legible characters of all
the regulations applicable to the site to be posted up
in some conspicuous place, or kept in some readily
accessible place, at or near the site where they may be
conveniently read by the persons working at the site;
10 and
- (b) so often as the copy referred to in paragraph (a)
becomes defaced, obliterated or destroyed, must cause
the copy to be renewed without delay.

Penalty: \$5 000.

15 Consequential amendments

92. The Acts referred to in the first column of Schedule 2 are amended as set out in the second column of that Schedule.

Review of Act

- 20 **93.** (1) The Minister is to conduct a review of the operation
and effectiveness of this Act as soon as is practicable after the
expiration of 5 years from its commencement, and in the course
of the review the Minister is to consider and have regard to —
- (a) the effectiveness of the operations of the department
and the Board;
- 25 (b) the need for the continuation of the functions of the
Board; and

cl. 93

(c) a matter that appears to be relevant to the operation and effectiveness of this Act.

(2) The Minister is to prepare a report based on the review and, as soon as practicable after the report is prepared, the
5 Minister is to cause the report to be laid before each House of Parliament.

SCHEDULE 1 — SUBJECT MATTER FOR REGULATIONS

[Section 90]

1. The appointment and functions of inspectors and their assistants.
2. Inspection of petroleum sites and petroleum operations.
- 5 3. The records to be made and kept in relation to the exercise of inspectors' powers and the provision of, and access to, information about the contents of those records.
4. Dealing with or imposing duties on employers, operators and other persons under this Act.
- 10 5. Matters connected with any kind of petroleum operation including any of the following activities that is conducted for the purpose of, or that is ancillary to, exploring or drilling for petroleum or recovering, producing, treating or transporting petroleum —
 - (a) geological and geophysical survey;
 - 15 (b) exploration drilling;
 - (c) appraisal drilling;
 - (d) production drilling;
 - (e) workover of a well;
 - (f) design, construction and commissioning of plant;
 - 20 (g) operation of support vessels and aircraft;
 - (h) diving operations;
 - (i) construction, maintenance, operation, use, alteration or decommissioning of a petroleum pipeline;
 - (j) processing of hydrocarbons and associated fluids;
 - 25 (k) operation of equipment, plant, facilities and other utilities ancillary to exploration and production;
 - (l) operation of residential facilities and recreational facilities in support of a petroleum operation if the facilities are located in an area to which a petroleum authorization applies;
 - 30 (m) operations at a petroleum site for assessing the environmental impact of a petroleum operation and for rehabilitation of the site;

Petroleum Safety Bill 1998

Sch. 1

- (n) operations for the care, security and maintenance of a petroleum site and plant at the site whether or not exploration or production operations at the site are suspended;
- 5 (o) operations to leave a petroleum site safe on abandonment;
- (p) decommissioning or removal of a petroleum site.
- 6. Matters connected with any kind of plant at petroleum sites or used in particular petroleum operations.
- 7. Work systems at petroleum sites.
- 10 8. Safety management systems at petroleum sites.
- 9. Hazard identification and risk assessment at petroleum sites or in relation to particular petroleum operations and the measures or precautions to avoid accidents, injuries, harm to health or dangerous occurrences at petroleum sites or in particular petroleum operations.
- 15 10. The safety and health standards and procedures to be complied with —
 - (a) at petroleum sites or in particular petroleum operations;
 - (b) in the performance of work in connection with petroleum sites or particular petroleum operations;
 - 20 (c) in the use, cleaning, maintenance, disposal or transportation of plant in connection with petroleum sites or particular petroleum operations;
 - (d) in the use, handling, treatment, removal, processing, storing, transport or disposal of substances in connection with petroleum sites or particular petroleum operations;
 - 25 (e) in the design, importing or supplying of plant in connection with petroleum sites or particular petroleum operations; or
 - (f) in the design, manufacture, importing or supplying of substances in connection with petroleum sites or particular petroleum operations.
 - 30
- 11. The action to be taken in the event of an accident, injury, harm to a person's health or a dangerous occurrence in connection with a petroleum site or a particular petroleum operation.
- 35 12. Escape and evacuation from, and other emergency response requirements for, petroleum sites including training and competency of personnel, procedures, exercises and equipment.

13. Protective clothing, safety appliances and equipment for use in and about petroleum sites or particular petroleum operations.
14. The construction, decommissioning and abandonment of facilities at petroleum sites.
- 5 15. Guard rails, access ways, openings, ladders and escape routes at petroleum sites.
16. Matters connected with cranes, winches and lifts at petroleum sites.
- 10 17. The installation and use of electricity in petroleum sites and with lighting and communications equipment at petroleum sites.
18. Prohibiting or otherwise controlling the treatment, handling or use of substances at petroleum sites or used in particular petroleum operations.
19. Radiation safety at petroleum sites.
- 15 20. Fire and gas detection and protection systems at petroleum sites.
21. Explosives at petroleum sites.
22. Matters connected with transport at, to or from petroleum sites including aircraft and vessel operations.
23. The classification of petroleum sites or petroleum operations.
- 20 24. Matters connected with the issue, suspension and cancellation of certificates, permits or other authorizations or exemptions required or permitted under this Act.
25. Work permit systems at petroleum sites or for particular petroleum operations.
- 25 26. The employment and training of persons who work or who propose to work at petroleum sites or in particular petroleum operations.
27. Age limits of persons for certain classes of work at petroleum sites or in particular petroleum operations.
- 30 28. The number of hours that persons may work at petroleum sites or in particular petroleum operations.
29. Literacy and language requirements for persons working in or about petroleum sites.
- 35 30. The medical examination, if required by the State Petroleum Director, of persons who work or who propose to work at petroleum sites or in particular petroleum operations.

Petroleum Safety Bill 1998

Sch. 1

31. The medical fitness of persons for certain classes of work at petroleum sites or in particular petroleum operations.
32. The provision of first aid facilities and medical support for use at petroleum sites.
- 5 33. The provision of temporary refuges for persons at petroleum sites.
34. Hygiene and sanitation at petroleum sites.
35. Smoking by any persons at petroleum sites.
36. Possession, control or consumption of substances which, if consumed by a person, would impair the person's ability to perform safely work at a petroleum site.
- 10 37. Surveillance of the health and the biomedical monitoring of persons who work at petroleum sites or in particular petroleum operations.
- 15 38. The keeping of records concerning the health of persons who work at petroleum sites or in particular petroleum operations and the provision of those records to the State Petroleum Director.
39. The reporting of injuries, occupational diseases, accidents and occurrences, the method by which those things are to be reported and the matters to be reported.
- 20 40. The recording of injuries, occupational diseases, accidents and occurrences, the method by which those things are to be recorded and the matters to be recorded.
41. The admission of personnel to petroleum sites and the maintenance of personnel records.
- 25 42. Plans, surveys and other documentation relating to petroleum sites.
43. Matters requiring consultation with, or the agreement of, persons who work at petroleum sites or in particular petroleum operations.
- 30 44. Dealing with wilful damage to, or the unauthorized removal of, plant or any other thing provided at a petroleum site for the proper working of the petroleum site or a particular petroleum operation.
45. The conduct of elections under this Act by secret ballot.
46. Fees or charges, and the recovery of fees or charges.

SCHEDULE 2 — CONSEQUENTIAL AMENDMENTS

[Section 92]

Short title of Act	Amendment
5	<p><i>Occupational Safety and Health Act 1984</i></p> <p>In section 4 (2) delete “, petroleum well or petroleum pipeline” and substitute the following —</p> <p>“ or petroleum site ”.</p>
10	<p>In section 4 (2) delete “, the <i>Petroleum Act 1967</i>, the <i>Petroleum (Submerged Lands) Act 1982</i>” or the <i>Petroleum Pipelines Act 1969</i>,” and substitute the following —</p> <p>“ or the <i>Petroleum Safety Act 1998</i> ”.</p>
15	<p><i>Petroleum Act 1967</i></p> <p>Section 91 (1) is amended by deleting “and shall secure the safety, health and welfare of persons engaged in those operations in or about the permit area, drilling reservation, lease area or licence area”.</p>
20	<p>Section 91 (3) is amended by deleting “and shall secure the safety, health and welfare of persons engaged in those operations in or about that area”.</p>
25	<p><i>Petroleum Pipelines Act 1969</i></p> <p>Section 36A is amended by deleting “and shall secure the safety, health and welfare of persons engaged in operations in connection with the pipeline”.</p> <p>Section 67 (1) (a) is amended by deleting “and the safety measures to be taken in respect thereof”.</p>
30	<p><i>Petroleum (Submerged Lands) Act 1982</i></p> <p>Section 97 (1) is amended by deleting “and shall secure the safety, health and welfare of persons engaged in those operations in or about the permit area, lease area or licence area”.</p>

Petroleum Safety Bill 1998

Sch. 2

Section 97 (3) is amended by deleting “and shall secure the safety, health and welfare of persons engaged in operations in connection with the pipeline”.

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Section 97 (5) is amended by deleting “and shall secure the safety, health and welfare of persons engaged in those operations in or about that area”.

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