

Petroleum Legislation Amendment and Repeal Bill 2005

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Western Australia

LEGISLATIVE ASSEMBLY

Petroleum Legislation Amendment and Repeal Bill 2005

A Bill for

An Act to amend the —

- *Petroleum Act 1967*;
- *Petroleum Pipelines Act 1969*;
- *Petroleum (Submerged Lands) Act 1982*,

5 **to repeal the *Petroleum Safety Act 1999* and to make consequential amendments to the —**

- *Barrow Island Act 2003*;
- *Industrial Relations Act 1979*;
- *Occupational Safety and Health Act 1984*,

to make provision for safety and health matters relating to petroleum operations, petroleum pipeline operations and offshore petroleum operations.

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Petroleum Legislation Amendment and Repeal Act 2005*.

5 **2. Commencement**

- (1) This Act comes into operation on a day fixed by proclamation.
- (2) Different days may be fixed under subsection (1) for different provisions.

Part 2 — *Petroleum Act 1967*

3. The Act amended

The amendments in this Part are to the *Petroleum Act 1967**.

[* Reprinted as at 14 January 2000.

5 For subsequent amendments see *Western Australian
Legislation Information Tables for 2004, Table 1, p. 335.*]

4. Section 5 amended

Section 5(1) is amended by inserting in the appropriate
alphabetical positions the following definitions —

10

“

“**facility**” means a structure for or in connection with
carrying out a petroleum operation;

“**listed OSH law**” means —

15

- (a) section 117A;
- (b) Schedule 1;
- (c) a regulation made for the purposes of
Schedule 1;
- (d) a regulation made for the purposes of
section 149B; or
- (e) any other written law relating to
occupational safety and health matters that is
prescribed for the purposes of this paragraph;

20

“**operator**” —

25

- (a) in relation to an operation to explore for
petroleum or the carrying on of such
operations or the execution of such works as
are necessary for that purpose, in a permit
area, means the registered holder of the
permit for that area;
- (b) in relation to an operation to drill for
petroleum or the carrying on of such

30

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- operations or the execution of such works as are necessary for that purpose, in a drilling reservation area, means the registered holder of the drilling reservation for that area;
- 5 (c) in relation to an operation to explore for petroleum or the carrying on of such operations or the execution of such works as are necessary for that purpose, in a lease area, means the registered holder of the lease for that area;
- 10 (d) in relation to —
- (i) an operation to recover petroleum in a licence area or to recover petroleum from a licence area in another area;
- 15 (ii) an operation to explore for petroleum in a licence area; or
- (iii) the carrying on of such operations or the execution of such works in a licence area as are necessary for those purposes,
- 20 means the registered holder of the licence for that area;
- (e) in relation to an operation for the mining, obtaining or production of petroleum under the Barrow Island lease, as defined in
- 25 section 128, means the lessee, as defined in that section;
- (f) in relation to a petroleum exploration operation specified in a special prospecting authority, means the registered holder of the
- 30 special prospecting authority;
- (g) in relation to a petroleum exploration operation or an operation related to the recovery of petroleum in or from an area specified in an access authority, means the
- 35 registered holder of the access authority;

- 5 (h) in relation to the injection of petroleum into a natural underground reservoir, means a person (other than the Minister) who is a party to an agreement under section 67(1), or who has the Minister's approval under section 67(2), in respect of that injection;
- 10 (i) in relation to the injection of carbon dioxide, as defined in section 3 of the *Barrow Island Act 2003*, into an underground reservoir or other subsurface formation, means a person who has the BI Act Minister's approval under section 13 of that Act, in respect of that injection;
- 15 (j) in relation to any other kind of operation that is prescribed by the regulations to be a petroleum operation for the purposes of the definition of "petroleum operation", means the person prescribed by the regulations to be the operator of such a petroleum operation
- 20 for the purposes of this definition;

"other protected person" means a person who is at or near a place where a petroleum operation is being carried on at the invitation of, or with the express or implied consent of —

- 25 (a) the operator of the petroleum operation; or
- (b) a person in control of a part of the petroleum operation;

"petroleum operation" means —

- 30 (a) an operation to explore for petroleum, and the carrying on of such operations and the execution of such works as are necessary for that purpose;
- (b) an operation to drill for petroleum, and the carrying on of such operations and the

(b) a person engaged in a petroleum operation or any other protected person.

(2) In this section —

“prescribed occupational safety and health laws”

means any laws of the State relating to occupational safety and health (whether or not they also relate to other matters) that are prescribed by the regulations for the purposes of this section.

”.

6. Section 83 repealed

Section 83 is repealed.

7. Section 91 amended

(1) 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”.

(2) 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”.

8. Section 117A inserted

After section 117 the following section is inserted —

“

117A. Interfering with petroleum operation

A person must not intentionally or recklessly —

(a) cause damage to, or interfere with, a well or any structure or vessel in the State that is, or is to be, used in a petroleum operation; or

(b) interfere with any petroleum operation.

Penalty: imprisonment for 10 years.

”.

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9. Section 118 amended

- (1) Section 118(1) is amended by deleting “the purposes of this Act and the regulations.” and inserting instead —

“

5 such or all of the purposes of this Act as are specified
 in the instrument of appointment.

”.

- (2) Section 118(2) is amended by deleting “he is such an inspector for the purposes of this Act and the regulations.” and inserting instead —

“

 the person is an inspector for the purposes specified in
 the certificate.

”.

15 **10. Section 119 amended**

Section 119(1) is amended by deleting “and the regulations,” and inserting instead —

“

20 , but without affecting the powers of an inspector under
 Schedule 1,

”.

11. Section 119A inserted

After section 119 the following section is inserted —

“

25 **119A. Protection from liability for wrongdoing**

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

- 30 (2) The protection given by subsection (1) applies even though the thing done as described in that subsection

may have been capable of being done whether or not this Act had been enacted.

- 5
- (3) Despite subsection (1), the State is not relieved of any liability that it might have for another person having done anything as described in that subsection.
 - (4) In this section a reference to the doing of anything includes a reference to the omission to do anything.

”.

12. Section 125 amended

10 Section 125 is amended by deleting “(being an offence arising under this Part) or the regulations”.

13. Section 126A inserted

After section 126 the following section is inserted —

“

15 **126A. Evidentiary matters**

- (1) In a proceeding for an offence against this Act an averment in the complaint that at a particular time —
 - (a) a particular operation was a petroleum operation;
 - 20 (b) a particular person was the operator of a petroleum operation;
 - (c) a particular person was in control of a particular part of a petroleum operation;
 - (d) a particular person was an employer who
 - 25 carried on a petroleum operation;
 - (e) a particular person was an employer of a particular person or particular persons engaged in a petroleum operation; or
 - (f) a particular person was an employee or
 - 30 inspector,

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is to be taken to have been proved in the absence of evidence to the contrary.

- 5
- (2) In a proceeding for an offence against this Act, proof is not required as to any of the following matters, unless evidence is given to the contrary —
- 10
- (a) a delegation under section 25 by the Minister of a power or function;
 - (b) the authority of any person to institute a proceeding for an offence against this Act other than an offence against a listed OSH law;
 - (c) the authority of an inspector to institute a proceeding for an offence against a listed OSH law.
- 15
- (3) In a proceeding for an offence against this Act, production of a copy of —
- (a) a code of practice;
 - (b) an Australian Standard; or
 - (c) an Australian/New Zealand Standard,
- 20
- purporting to be certified by the CEO to be a true copy as at any date or during any period is, without proof of the signature of the CEO, sufficient evidence of the contents of the code of practice or Standard as at that date or during that period.
- 25
- (4) In subsection (3) —
- “**Australian Standard**” means a document having that title published by Standards Australia;
- 30
- “**Australian/New Zealand Standard**” means a document having that title jointly published by Standards Australia and the Standards Council of New Zealand;

“CEO” means the chief executive officer of the department of the Public Service principally assisting in the administration of this Act.

”.

5 **14. Part IIIA inserted**

After section 149 the following Part is inserted —

“

Part IIIA — Occupational safety and health

149A. Occupational safety and health

10 Schedule 1 has effect.

149B. Regulations relating to occupational safety and health

- 15 (1) The regulations may make provision in relation to —
- (a) the occupational safety and health of a person engaged in a petroleum operation; or
 - (b) the safety and health of any other protected person.

- 20 (2) Without limiting subsection (1), regulations for the purpose of that subsection may —
- (a) require a person who is carrying on a petroleum operation to establish and maintain a system of management to secure —
 - 25 (i) the occupational safety and health of a person engaged in a petroleum operation; or
 - (ii) the safety and health of any other protected person;
 - and
 - (b) specify requirements with which the system
- 30 must comply.

149C. Minister’s occupational safety and health functions

- (1) The Minister has the following functions —
- (a) to promote the occupational safety and health of persons engaged in petroleum operations;
 - 5 (b) to develop and implement effective monitoring and enforcement strategies to secure compliance by persons with their occupational safety and health obligations under this Act;
 - 10 (c) to investigate accidents, occurrences and circumstances that affect, or have the potential to affect, the occupational safety and health of persons engaged in petroleum operations;
 - 15 (d) to advise persons, either on the Minister’s own initiative or on request, on occupational safety and health matters relating to petroleum operations.
- (2) The Minister has power to do all things necessary or convenient to be done for or in connection with the performance of the Minister’s functions.

”.

15. Section 153 amended

- (1) Section 153(2) is amended as follows:
- (a) after paragraph (j) by deleting “and”;
 - 25 (b) in paragraph (k) by deleting “State.” and inserting instead —
 - “
 - State;
 - 30 (l) fees in relation to petroleum operations, safety audits or other services provided by the Minister;

(m) any transitional matter arising out of the amendments made to this Act by the *Petroleum Legislation Amendment and Repeal Act 2005*.

”.

5 (2) After section 153(2b) the following subsection is inserted —

“

10 (2c) Regulations under this section may adopt or apply, with or without modification, any regulation made under the *Petroleum Pipelines Act 1969*, the *Petroleum (Submerged Lands) Act 1982* or the Commonwealth Act as defined in that Act, that is in force or existing at the time when the regulations under this section take effect or as in force or existing from time to time.

”.

15 **16. Various sections amended to delete “the regulations”**
(*Interpretation Act 1984* s. 46)

(1) The provisions set out in the Table to this section are amended by deleting “or the regulations” in each case.

Table

s. 8(1) (twice) s. 121(1) and (2)
s. 25(1)(a)

20 (2) The provisions set out in the Table to this section are amended by deleting “and the regulations” in each case.

Table

s. 38 s. 105(4)
s. 43D s. 106(5)
s. 48C s. 112(6)
s. 62

s. 17

17. Schedule replaced with Schedule 1

The Schedule is repealed and the following Schedule is inserted instead —

“

5

Schedule 1 — Occupational safety and health

[s. 149A]

Division 1 — Introduction

1. Objects

10

The objects of this Schedule are, in relation to petroleum operations —

15

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- (a) to secure the occupational safety and health of persons engaged in those operations;
- (b) to protect persons in the vicinity of those operations at the invitation of, or with the express or implied consent of, the operators of, or persons in control of a part of, those operations from risks to safety and health arising out of those operations;
- (c) to ensure that expert advice is available on occupational safety and health matters in relation to those operations;
- (d) to promote an occupational environment for members of the workforce engaged in those operations that is adapted to their needs relating to safety and health; and
- (e) to foster a consultative relationship between all relevant persons concerning the safety and health of members of the workforce engaged in those operations.

2. Simplified outline

The following is a simplified outline of this Schedule —

- 5 • This Schedule sets up a scheme to regulate occupational safety and health matters relating to petroleum operations.
- 10 • Occupational safety and health duties are imposed on the following —
 - (a) the operator of a petroleum operation;
 - (b) a person in control of any part of a petroleum operation;
 - (c) an employer;
 - (d) a manufacturer of plant, or a substance, for use in a petroleum operation;
 - 15 (e) a supplier of a facility, or of any plant or substance, for use in a petroleum operation;
 - (f) a person who erects or installs a facility, or any plant, for use in a petroleum operation;
 - (g) a person engaged in a petroleum operation.
- 20 • A group of members of the workforce engaged in a petroleum operation may be established as a designated work group.
- The members of a designated work group may select a safety and health representative for that designated work group.
- 25 • The safety and health representative may exercise certain powers for the purpose of promoting or ensuring the occupational safety and health of group members.
- An inspector may conduct an inspection —
 - 30 (a) to ascertain whether a listed OSH law is being complied with;
 - (b) concerning a contravention or a possible contravention of a listed OSH law; or

(c) concerning an accident or dangerous occurrence that has happened at or near a place at which a petroleum operation is carried on.

5

- The operator of a petroleum operation must report to the Minister accidents and dangerous occurrences arising out of the petroleum operation.

3. Definitions

In this Schedule —

10

“**accident**” includes the contraction of a disease;

“**contract**” includes an arrangement or understanding;

“**contractor**” has the meaning given by clause 6;

“**dangerous occurrence**” means an occurrence declared by the regulations to be a dangerous occurrence for the purposes of this definition;

15

“**designated work group**” means —

(a) a group of members of the workforce engaged in a petroleum operation that is established as a designated work group under clause 17 or 18; or

20

(b) that group as varied in accordance with clause 19 or 20;

“**employee**”, in relation to an employer, means an employee of that employer;

“**employer**” means an employer who carries on a petroleum operation;

25

“**group member**”, in relation to a designated work group for a petroleum operation, means a person who is —

(a) a member of the workforce engaged in that operation; and

(b) included in that designated work group;

30

“**improvement notice**” means an improvement notice issued under clause 60(1);

“**inspection**” means an inspection conducted under Division 4 and includes an investigation or inquiry;

“member of the workforce”, in relation to a petroleum operation, means a natural person who is engaged in the operation, whether —

5

- (a) as an employee of the operator or of another person; or
- (b) as a contractor of the operator or of another person;

10

“operator’s representative” means a person present at a workplace in compliance with the obligations imposed on the operator by clause 4;

“own” includes own jointly and own in part;

“plant” includes any machinery, equipment or tool, or any component;

15

“premises” includes the following —

- (a) a structure or building;
- (b) a place (whether or not enclosed or built on);
- (c) a part of a thing referred to in paragraph (a) or (b);

20

“prohibition notice” means a prohibition notice issued under clause 58(1);

“registered organisation” means an organisation —

25

- (a) within the meaning of the *Workplace Relations Act 1996* of the Commonwealth; or
- (b) as defined in section 7(1) of the *Industrial Relations Act 1979*;

30

“regulated business premises” means —

- (a) a place where a petroleum operation is carried on; or
- (b) premises that are —
 - (i) occupied by a person who is the operator of a petroleum operation; and
 - (ii) used, or proposed to be used, wholly or principally in connection with a petroleum operation;

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“**regulations**” means regulations made for the purposes of this Schedule;

“**Tribunal**” has the meaning given to that term in the *Occupational Safety and Health Act 1984* section 51G(2);

“**work**” means work that is directly or indirectly related to a petroleum operation;

“**workforce representative**” means —

(a) in relation to a person who is a member of the workforce engaged in a petroleum operation — a registered organisation of which that person is a member, if the person is qualified to be a member of that organisation because of the work the person performs in relation to the petroleum operation; or

(b) in relation to a designated work group or a proposed designated work group — a registered organisation of which a person who is, or who is likely to be, in the work group is a member, if the person is qualified to be a member of that organisation because of the work the person performs, or will perform, in relation to the petroleum operation as a member of the group;

“**work group employer**”, in relation to a designated work group in relation to a petroleum operation, means an employer of one or more group members, but does not include the operator of the petroleum operation;

“**workplace**”, in relation to a petroleum operation, means the whole place where the petroleum operation is carried on or any part of a place where the petroleum operation is carried on.

4. Operator must ensure presence of operator’s representative

- (1) The operator of a petroleum operation must ensure that, at all times when one or more natural persons are engaged in the petroleum operation, there is present at the workplace a natural person (the “**operator’s representative**”) who has

day to day management and control of the petroleum operation.

Penalty: \$5 500.

- 5 (2) The operator of a petroleum operation must ensure that the name of the operator's representative is displayed in a prominent place at the workplace.
Penalty: \$5 500.
- 10 (3) Subclause (1) does not imply that, if the operator is a natural person, the operator's representative may not be, from time to time, the operator.

5. Safety and health of persons using an accommodation amenity

15 For the avoidance of doubt, a reference in this Schedule to the occupational safety and health of a person includes a reference to the safety and health of a person using an accommodation amenity provided for the accommodation of persons engaged in a petroleum operation.

6. Contractor

20 For the purposes of this Schedule, a natural person is taken to be a "contractor" of another person (the "**relevant person**") if the natural person is engaged in a petroleum operation under a contract for services between —

- (a) the relevant person; and
- (b) either —
- 25 (i) the natural person; or
- (ii) the employer of the natural person.

Division 2 — Occupational safety and health

Subdivision 1 — Duties relating to occupational safety and health

7. Duties of operator

- 30 (1) The operator of a petroleum operation must take all reasonably practicable steps to ensure that the petroleum

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operation is carried out in a manner that is safe and without risk to the health of persons engaged in the petroleum operation or other protected persons.

Penalty: \$110 000.

- 5 (2) Without limiting the generality of subclause (1), the operator of a petroleum operation must —
- 10 (a) provide and maintain a physical environment at the place where the petroleum operation is carried out that is safe and without risk to health;
 - 15 (b) provide and maintain adequate amenities for the safety and health of all members of the workforce engaged in the petroleum operation;
 - (c) ensure that any plant, equipment, materials and substances for use in the petroleum operation are safe and without risk to health;
 - (d) implement and maintain systems of work in relation to the petroleum operation that are safe and without risk to health;
 - 20 (e) implement and maintain appropriate procedures and equipment for the control of, and response to, emergencies arising out of the petroleum operation;
 - (f) provide all members of the workforce, in appropriate languages, with the information, instruction, training and supervision necessary for them to carry out their activities in a manner that does not adversely affect the occupational safety and health of persons engaged in the petroleum operation;
 - 25 (g) monitor the occupational safety and health of all members of the workforce and keep records of that monitoring;
 - 30 (h) provide appropriate medical and first aid services at the places at which a petroleum operation is carried on; and

- 5 (i) develop, in consultation with members of the
workforce and workforce representatives, a policy
relating to occupational safety and health that —
- (i) will enable the operator and the members of
the workforce to cooperate effectively in
promoting and developing measures to
ensure the occupational safety and health of
persons engaged in the petroleum operation;
- 10 (ii) will provide adequate mechanisms for
reviewing the effectiveness of the measures;
and
- (iii) provides for the making of an agreement
that complies with subclauses (4) and (5).

Penalty: \$110 000.

- 15 (3) Subclause (2)(i) does not require the operator of a petroleum
operation to engage in consultations with a workforce
representative unless a member of the workforce engaged in
the petroleum operation has requested the workforce
representative to be involved in those consultations.

- 20 (4) The agreement referred to in subclause (2)(i)(iii) must be
between —

- (a) on the one hand — the operator; and
- (b) on the other hand —
- 25 (i) the members of the workforce; and
- (ii) if a member of the workforce engaged in
the petroleum operation has requested a
workforce representative in relation to the
member to be a party to that agreement —
that workforce representative.

- 30 (5) The agreement referred to in subclause (2)(i)(iii) must
provide appropriate mechanisms for continuing consultation
between —

- (a) on the one hand — the operator; and
- (b) on the other hand —
- 35 (i) the members of the workforce; and

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5 (ii) if a member of the workforce engaged in the petroleum operation has requested a workforce representative in relation to the member to be involved in consultations on a particular occasion — that workforce representative.

(6) The agreement may provide for any other matters agreed between the parties to it.

10 **8. Duties of persons in control of parts of petroleum operation**

(1) A person who is in control of any part of a petroleum operation must take all reasonably practicable steps to ensure that that part of the petroleum operation is carried out in a manner that is safe and without risk to the health of persons engaged in the petroleum operation or other protected persons

Penalty: \$110 000.

20 (2) Without limiting the generality of subclause (1), a person who is in control of any part of a petroleum operation must —

(a) ensure that the physical environment at the place where that part of the petroleum operation is carried out is safe and without risk to health;

25 (b) ensure that any plant, equipment, materials and substances for use in that part of the petroleum operation are safe and without risk to health;

(c) implement and maintain systems of work in relation to that part of the petroleum operation that are safe and without risk to health;

30 (d) ensure a means of access to, and egress from the place where that part of the petroleum operation is carried out is safe and without risk to health; and

35 (e) provide all members of the workforce engaged in that part of the petroleum operation in appropriate languages, with the information, instruction, training and supervision necessary for them to carry

out their work in a manner that is safe and without risk to health.

Penalty: \$110 000.

9. Duties of employers

- 5 (1) An employer must take all reasonably practicable steps to protect the safety and health of employees engaged in a petroleum operation.
Penalty: \$110 000.
- 10 (2) Without limiting the generality of subclause (1), an employer must —
- 15 (a) provide and maintain a working environment that is safe for employees and without risk to their health;
 - (b) ensure that any plant, equipment, materials and substances for use in connection with the employees' work are safe and without risk to health;
 - (c) implement and maintain systems of work that are safe and without risk to health;
 - 20 (d) provide a means of access to, and egress from, the employees' work location that is safe and without risk to health; and
 - 25 (e) provide the employees, in appropriate languages, with the information, instruction, training and supervision necessary for them to carry out their work in a manner that is safe and without risk to health.
- Penalty: \$110 000.
- 30 (3) A person has, in respect of a contractor of that person, the same obligations that an employer has under subclauses (1) and (2) in respect of an employee of that employer, but only in relation to —
- (a) matters over which the first-mentioned person has control; or

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- (b) matters over which —
- (i) the first-mentioned person would have had control apart from express provision to the contrary in a contract; and
 - (ii) the first-mentioned person would, in the circumstances, usually be expected to have had control.
- (4) An employer must take all reasonable steps to —
- (a) monitor the safety and health of employees; and
 - (b) keep records of that monitoring.
- Penalty: \$110 000.
- (5) An employer must take all reasonably practicable steps to ensure that —
- (a) work that is undertaken by the employer's employees is carried out in a manner that is safe and without risk to the health of persons engaged in the petroleum operation or other protected persons; and
 - (b) the employer's system of work is operated in a manner that is safe and without risk to the health of persons engaged in the petroleum operation or other protected persons.
- Penalty: \$22 000.

10. Duties of manufacturers in relation to plant and substances

- (1) A manufacturer of any plant that the manufacturer knows or ought reasonably to expect will be used by members of the workforce engaged in a petroleum operation must take all reasonably practicable steps —
- (a) to ensure that the plant is so designed and constructed as to be, when properly used, safe and without risk to health;
 - (b) to carry out, or cause to be carried out, the research, testing and examination necessary in order to discover, and to eliminate or minimise, any risk to

safety or health that may arise from the use of the plant; and

5

(c) to make available, in connection with the use of the plant in a petroleum operation, adequate written information about —

10

(i) the use for which it is designed and has been tested;

(ii) details of its design and construction; and

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

Penalty: \$22 000.

15

(2) A manufacturer of any substance that the manufacturer knows or ought reasonably to expect will be used by members of the workforce engaged in a petroleum operation must take all reasonably practicable steps —

20

(a) to ensure that the substance is so manufactured as to be, when properly used, safe and without risk to health;

(b) to carry out, or cause to be carried out, the research, testing and examination necessary to discover, and to eliminate or minimise, any risk to safety or health that may arise from the use of the substance; and

25

(c) to make available, in connection with the use of the substance in a petroleum operation, adequate written information concerning —

30

(i) the use for which it is manufactured and has been tested;

(ii) details of its composition;

(iii) any conditions necessary to ensure that, when put to the use for which it was manufactured and tested, it will be safe and without risk to health; and

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- (iv) the first aid and medical procedures that should be followed if the substance causes injury.

Penalty: \$22 000.

- 5 (3) If —
 - (a) plant or a substance is imported into Australia by a person who is not its manufacturer; and
 - (b) at the time of the importation, the manufacturer of the plant or substance does not have a place of
10 business in Australia,
the first-mentioned person is taken, for the purposes of this clause, to be the manufacturer of the plant or substance.
- 15 (4) This clause does not affect the operation of any other law of this State that imposes an obligation on a manufacturer in respect of defective goods or in respect of information to be supplied in relation to goods.

11. Duties of suppliers of facilities, plant and substances

- 20 (1) A supplier of a facility, or of any plant or substance, that the supplier ought reasonably to expect will be used by members of the workforce engaged in a petroleum operation, must take all reasonably practicable steps —
 - 25 (a) to ensure that, at the time of supply, the facility, or the plant or substance, is in such condition as to be, when properly used, safe and without risk to health;
 - 30 (b) to carry out, or cause to be carried out, the research, testing and examination necessary to discover, and to eliminate or minimise, any risk to safety or health that may arise from the condition of the facility, plant or substance; and
 - 35 (c) to make available —
 - (i) in the case of a facility — to the operator of the petroleum operation; and
 - (ii) in the case of plant or substance — to the person to whom the plant or substance is supplied,

adequate written information, in connection with the use of the facility, plant or substance (as the case requires) about —

- 5 (iii) the condition of the facility, plant or substance at the time of supply;
- (iv) any risk to the safety and health of members of the workforce engaged in a petroleum operation to which the condition of the facility, plant or substance may give rise unless it is properly used;
- 10 (v) the steps that need to be taken in order to eliminate that risk; and
- (vi) in the case of a substance — the first aid and medical procedures that should be followed if the condition of the substance causes injury to a member of the workforce engaged in a petroleum operation.

Penalty: \$22 000.

- 20 (2) For the purposes of subclause (1), if a person (the “**ostensible supplier**”) supplies to a person either a facility, or any plant or substance, that is for use by members of the workforce engaged in a petroleum operation, and the ostensible supplier —
 - 25 (a) carries on the business of financing the acquisition or the use of goods by other persons;
 - (b) has, in the course of that business, acquired an interest in the facility, or in the plant or substance, from another person (the “**actual supplier**”), solely for the purpose of financing its acquisition by, or its provision to, the person to whom it is finally supplied; and
 - 30 (c) has not taken possession of the facility, plant or substance, or has taken possession of the facility, plant or substance solely for the purpose of passing possession of the facility, plant or substance to the person to whom it is finally supplied,
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a reference in subclause (1) to a supplier is, in relation to the facility, plant or substance referred to in this subclause, to be read as a reference to the actual supplier and not as a reference to the ostensible supplier.

- 5 (3) This clause does not affect the operation of any other law of this State that imposes an obligation in respect of the sale or supply of goods or in respect of the information to be supplied in relation to goods.

12. Duties of persons erecting facilities or installing plant

- 10 (1) A person who erects or installs a facility, or erects or installs any plant, for use in a petroleum operation, must take all reasonably practicable steps to ensure that the facility or plant is not erected or installed in such a way that it is unsafe or constitutes a risk to safety or health.

15 Penalty: \$22 000.

- (2) This clause does not affect the operation of any other law of this State that imposes an obligation in respect of the erection or installation of structures or goods or the supply of services.

20 **13. Duties of persons in relation to occupational safety and health**

- (1) A person engaged in a petroleum operation must, at all times, take all reasonably practicable steps —
- 25 (a) to ensure that the person does not take any action, or make any omission, that creates a risk, or increases an existing risk, to —
- (i) the occupational safety and health of that person; or
- (ii) the safety and health of any other protected person;
- 30 (b) in respect of any obligation imposed on the operator or on any other person under a listed OSH law — to cooperate with the operator or that other person to the extent necessary to enable the operator or that
- 35 other person to fulfil that obligation; and

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- (c) to use equipment that is —
 - (i) supplied to the person by the operator, an employer of the person or any other person having control of the petroleum operation (the “**equipment supplier**”); and
 - (ii) necessary to protect the occupational safety and health of the person, or the safety and health of any other person engaged in the petroleum operation or protected person,
in accordance with any instructions given by the equipment supplier, consistent with the safe and proper use of the equipment.
- Penalty: \$5 500.
- (2) Despite subclause (1), the choice or manner of use, or choice and manner of use, of equipment of the kind referred to in subclause (1)(c)(ii) is a matter that may be, consistently with each listed OSH law —
 - (a) agreed on between the equipment supplier and any relevant safety and health representative; or
 - (b) agreed on by a safety and health committee.
 - (3) If an agreement of the kind referred to in subclause (2)(a) or (b) provides a process for choosing equipment of a particular kind that is to be provided by the equipment supplier, action must not be taken against a person for failure to use equipment of that kind that is so provided unless the equipment has been chosen in accordance with that process.
 - (4) If an agreement of the kind referred to in subclause (2)(a) or (b) provides a process for determining the manner of use of equipment of a particular kind, action must not be taken against a person for failure to use, in the manner required by the equipment supplier, equipment of that kind that is so provided unless the manner has been determined in accordance with that process.

14. Reliance on information supplied or results of research

- 5 (1) For the purpose of the application of clause 7, 8 or 9 to the use of plant or a substance, a person on whom an obligation is imposed under any of those clauses is regarded as having taken reasonably practicable steps as required by the relevant clause, in relation to the use of the plant or substance, to the extent that —
- 10 (a) the person ensured, so far as practicable, that its use was in accordance with the information supplied by the manufacturer or the supplier of the plant or substance relating to occupational safety and health in its use; and
- (b) it was reasonable for the person to rely on that information.
- 15 (2) For the purpose of the application of clause 10 or 11 to carrying out research, testing and examining a facility, or any plant or substance, a person on whom an obligation is imposed under either of those clauses is regarded as having taken reasonably practicable steps as required by the relevant clause, in relation to carrying out research, testing and examining the facility, plant or substance, to the extent that —
- 20 (a) the research, testing or examination has already been carried out by or on behalf of someone else; and
- 25 (b) it was reasonable for the person to rely on that research, testing or examination.
- 30 (3) For the purpose of the application of clause 12 to the erection of a facility or the erection or installation of plant for use in a petroleum operation, a person on whom an obligation is imposed under that clause is regarded as having taken reasonably practicable steps as required by that clause to the extent that —
- 35 (a) the person ensured, so far as is reasonably practicable, that the erection of the facility, or the erection or installation of the plant, was —

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- (i) in accordance with information supplied by the manufacturer or supplier of the facility or plant relating to its erection or its installation; and
 - (ii) consistent with the occupational safety and health of persons engaged in the petroleum operation;
- and
- 10 (b) it was reasonable for the person to rely on that information.
- (4) Nothing in this clause limits the generality of what constitutes reasonably practicable steps as required by clause 7, 8, 9, 10, 11 or 12.

15 **Subdivision 2 — Regulations relating to occupational safety and health**

15. Regulations relating to occupational safety and health

- (1) The regulations may make provision relating to any matter affecting, or likely to affect, the occupational safety and health of persons engaged in a petroleum operation.
- 20 (2) Regulations made for the purposes of subclause (1) may make provision for any or all of the following —
- (a) prohibiting or restricting the performance of all work or specified work in relation to a petroleum operation;
 - 25 (b) prohibiting or restricting the use of all plant or specified plant in a petroleum operation;
 - (c) prohibiting or restricting the carrying out of all processes or a specified process in a petroleum operation;
 - 30 (d) prohibiting or restricting the storage or use of all substances or specified substances in a petroleum operation;

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- (e) specifying the form in which information required to be made available under clause 10(1)(c) or 11(1)(c) is to be so made available;
- (f) prohibiting, except in accordance with licences granted under the regulations, the use of specified plant or specified substances in a petroleum operation;
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- (g) providing for —
- (i) the issue, variation, renewal, transfer, suspension and cancellation of those licences; and
- (ii) the conditions to which the licences may be subject;
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- (h) regulating the maintenance and testing of plant for use in a petroleum operation;
- (i) regulating the labelling or marking of substances for use in a petroleum operation;
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- (j) regulating the transport of specified plant or specified substances for use in a petroleum operation;
- (k) prohibiting the performance, in relation to a petroleum operation, of specified activities or work except —
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- (i) by persons who satisfy requirements of the regulations as to qualifications, training or experience; or
- (ii) under the supervision specified in the regulations;
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- (l) requiring specified action to avoid accidents or dangerous occurrences;
- (m) providing for, or prohibiting, specified action in the event of accidents or dangerous occurrences;
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- (n) providing for the employment of persons to perform specified duties relating to the maintenance of occupational safety and health in relation to a petroleum operation;

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- (o) regulating the provision and use, in a petroleum operation, of protective clothing and equipment, safety equipment and rescue equipment;
 - (p) providing for monitoring the health of members of the workforce engaged in a petroleum operation and the conditions at a place at which a petroleum operation is carried out;
 - (q) requiring employers to keep records of matters related to the occupational safety and health of employees;
 - (r) providing for the provision of first aid equipment and amenities at a place at which a petroleum operation is carried out.

Division 3 — Workplace arrangements

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Subdivision 1 — Introduction

16. Simplified outline

The following is a simplified outline of this Subdivision —

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- A group of members of the workforce engaged in a petroleum operation may be established as a designated work group.
- The members of a designated work group may select a safety and health representative for that designated work group.
- The safety and health representative may exercise certain powers for the purpose of promoting or ensuring the occupational safety and health of group members.
- A safety and health committee may be established in relation to the members of the workforce engaged in a petroleum operation.
- The main function of a safety and health committee is to assist the operator in relation to occupational safety and health matters.

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Subdivision 2 — Designated work groups

17. Establishment of designated work groups by request

- 5 (1) A request to the operator of a petroleum operation to enter into consultations to establish designated work groups in relation to the members of the workforce engaged in the petroleum operation may be made by —
- (a) any member of the workforce; or
- 10 (b) if a member of the workforce requests a workforce representative in relation to the member to make the request to the operator — that workforce representative.
- (2) The operator of a petroleum operation must, within 14 days after receiving a request under subclause (1), enter into consultations with —
- 15 (a) if any member of the workforce made a request to establish designated work groups —
- (i) that member of the workforce;
- (ii) if that member requests that the operator enter into consultations with a workforce representative in relation to the member — that workforce representative; and
- 20 (iii) each employer (if any) of members of the workforce;
- and
- 25 (b) if a workforce representative made a request to establish designated work groups —
- (i) if a member of the workforce requests that the operator enter into consultations with that workforce representative — that workforce representative; and
- 30 (ii) each employer of members of the workforce.
- (3) Within 14 days after the completion of consultations about the establishment of the designated work groups, the operator must, by notifying the members of the workforce,
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establish the designated work groups in accordance with the outcome of the consultations.

18. Establishment of designated work groups at initiative of operator

- 5 (1) If, at any time, the operator of a petroleum operation considers that designated work groups should be established, the operator must enter into consultations with —
- 10 (a) all members of the workforce;
- (b) if a member of the workforce requests that the operator enter into consultations with a workforce representative in relation to the member — that workforce representative; and
- 15 (c) each employer (if any) of members of the workforce.
- (2) Within 14 days after the completion of consultations about the establishment of the designated work groups, the operator must, by notifying the members of the workforce, establish the designated work groups in accordance with the
- 20 outcome of the consultations.

19. Variation of designated work groups by request

- 25 (1) A request to the operator of a petroleum operation to enter into consultations to vary designated work groups that have already been established in relation to the members of the workforce engaged in the petroleum operation may be made by —
- (a) any member of the workforce; or
- 30 (b) if a member of the workforce requests a workforce representative in relation to the member to make the request to the operator — that workforce representative.

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- (2) The operator of a petroleum operation must, within 14 days after receiving a request under subclause (1), enter into consultations with —
- 5 (a) if any member of the workforce made a request to vary designated work groups —
- (i) that member of the workforce;
- (ii) the safety and health representative of each designated work group affected by the proposed variation; and
- 10 (iii) each work group employer (if any) in relation to each designated work group affected by the proposed variation;
- and
- 15 (b) if a workforce representative made a request to vary designated work groups —
- (i) if a member of a designated work group affected by the proposed variation requests that the operator enter into consultations with that workforce representative in relation to the group — that workforce representative;
- 20 (ii) the safety and health representative of each designated work group affected by the proposed variation; and
- 25 (iii) each work group employer (if any) in relation to each designated work group affected by the proposed variation.
- (3) If —
- 30 (a) consultations take place about the variation of designated work groups that have already been established; and
- (b) as a result of the consultations, it has been determined that the variation of some or all of those designated work groups is justified,
- 35 then, within 14 days after the completion of the consultations, the operator must, by notifying the members

of the workforce who are affected by the variation, vary the designated work groups in accordance with the outcome of the consultations.

20. Variation of designated work groups at initiative of operator

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(1) If the operator of a petroleum operation believes the designated work groups should be varied, the operator may, at any time, enter into consultations about the variations with —

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(a) the safety and health representative of each of the designated work groups affected by the proposed variation;

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(b) if a member of a designated work group affected by the proposed variation requests that the operator enter into consultations with that workforce representative in relation to the group — that workforce representative; and

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(c) each work group employer (if any) in relation to each designated work group affected by the proposed variation.

(2) If —

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(a) consultations take place about the variation of designated work groups that have already been established; and

(b) as a result of the consultations, it has been determined that the variation of some or all of those designated work groups is justified,

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then, within 14 days after the completion of the consultations, the operator must, by notifying the members of the workforce who are affected by the variation, vary the designated work groups in accordance with the outcome of the consultations.

21. Referral of disagreement to reviewing authority

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(1) If, in the course of consultations under clause 17, 18, 19 or 20, there is a disagreement between any of the parties to the

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consultation about the manner of establishing or varying a designated work group, any party may, for the purpose of facilitating that consultation, refer the matter of disagreement to the reviewing authority.

- 5 (2) The party referring the matter to the reviewing authority must give notice of the referral to all the other parties to the disagreement.
- (3) The reviewing authority is to —
- 10 (a) resolve the matter of the disagreement referred to the reviewing authority; and
- (b) notify all parties to the disagreement of the decision.
- (4) If the matter of a disagreement is referred to the reviewing authority, the parties to the disagreement must complete the consultation in accordance with the resolution of that matter by the reviewing authority.
- 15 (5) In this clause —
- “reviewing authority”** means a person prescribed by the regulations to be a reviewing authority for the purposes of this clause.
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22. Manner of grouping members of the workforce

- (1) Consultations about the establishment or variation of a designated work group must be directed principally at the determination of the manner of grouping members of the workforce —
- 25 (a) that best and most conveniently enables their interests relating to occupational safety and health to be represented and safeguarded; and
- (b) that best takes account of the need for any safety and health representative selected for that designated work group to be accessible to each group member.
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- (2) The parties to the consultations must have regard, in particular, to —
 - (a) the number of members of the workforce engaged in the petroleum operation to which the consultation relates;
 - (b) the nature of each type of work performed by those members;
 - (c) the number and grouping of those members who perform the same or similar types of work;
 - (d) the workplaces where each type of work is performed;
 - (e) the nature of any risks to safety and health at each of those workplaces; and
 - (f) any overtime or shift working arrangement in relation to the petroleum operation.
 - (3) The designated work groups must be established or varied in such a way that, so far as practicable, each of the members of the workforce engaged in a petroleum operation is in a designated work group.
 - (4) All the members of the workforce engaged in a petroleum operation may be in one designated work group.

Subdivision 3 — Safety and health representatives

23. Selection of safety and health representatives

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- (1) One safety and health representative may be selected for each designated work group.
 - (2) A person is not eligible for selection as the safety and health representative for a designated work group unless the person is a member of the workforce included in the group.
 - (3) A person is taken to have been selected as the safety and health representative for a designated work group if —
 - (a) all the members of the workforce in the group unanimously agree to the selection; or

- (b) the person is elected as the safety and health representative of the group in accordance with clause 24.

24. Election of safety and health representatives

- 5 (1) If —
- (a) there is a vacancy in the office of safety and health representative for a designated work group; and
 - (b) within a reasonable time after the vacancy occurs, a person has not been selected under clause 23(3)(a),
- 10 the operator of the petroleum operation must invite nominations from all group members for election as the safety and health representative of the group.
- 15 (2) If the office of safety and health representative is vacant and the operator has not invited nominations within a further reasonable time that is no later than 6 months after the vacancy occurred, the Minister may direct the operator to do so.
- 20 (3) If there is more than one candidate for election at the close of the nomination period, the operator must conduct, or arrange for the conduct of, an election at the operator's expense.
- 25 (4) An election conducted or arranged to be conducted under subclause (3) must be conducted in accordance with regulations made for the purposes of this subclause if this is requested by the lesser of —
- (a) 100 members of the workforce normally in the designated work group; or
 - (b) a majority of the members of the workforce normally in the designated work group.
- 30 (5) If there is only one candidate for election at the close of the nomination period, that person is taken to have been elected.
- (6) A person cannot be a candidate in the election if he or she is disqualified under clause 30.

- (7) All the members of the workforce in the designated work group are entitled to vote in the election.
- (8) An operator conducting or arranging for the conduct of an election under this clause must comply with any relevant directions issued by the Minister.

25. List of safety and health representatives

The operator of a petroleum operation must —

- (a) prepare and keep up to date a list of all the safety and health representatives of designated work groups comprising members of the workforce engaged in the petroleum operation; and
- (b) ensure that the list is available for inspection, at all reasonable times, by —
- (i) the members of the workforce engaged in the petroleum operation; and
- (ii) inspectors.

26. Members of designated work group must be notified of selection etc. of safety and health representative

The operator of a petroleum operation must —

- (a) notify members of a designated work group in relation to the petroleum operation of a vacancy in the office of safety and health representative for the designated work group within a reasonable time after the vacancy arises; and
- (b) notify those members of the name of any person selected (whether under clause 23(3)(a) or (b)) as safety and health representative for the designated work group within a reasonable time after the selection is made.

27. Term of office

- (1) A safety and health representative for a designated work group holds office —
- (a) if, in consultations that took place under clause 17, 18, 19 or 20, the parties to the consultations agreed

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to the period for which the safety and health representative for the group was to hold office — for that period; or

(b) if paragraph (a) does not apply — for 2 years.

5 (2) The term of office of a safety and health representative begins at the start of the day on which he or she was selected.

10 (3) Nothing in this clause prevents a safety and health representative from being selected for further terms of office.

28. Training of safety and health representatives

15 (1) A safety and health representative for a designated work group must undertake a course of training relating to occupational safety and health that is accredited by the Minister for the purposes of this clause.

(2) The operator of the petroleum operation concerned must permit the representative to take any time off work, without loss of remuneration or other entitlements, that is necessary to undertake the training.

20 (3) If a person other than the operator is the employer of the representative, that person must permit the representative to take any time off work, without loss of remuneration or other entitlements, that is necessary to undertake the training.

25 **29. Resignation etc. of safety and health representatives**

(1) A person ceases to be the safety and health representative for the designated work group if —

30 (a) the person resigns as the safety and health representative;

(b) the person ceases to be a group member of that designated work group;

(c) the person's term of office expires without the person having been selected, under clause 23, to be

the safety and health representative for the designated work group for a further term; or

(d) the person is disqualified under clause 30.

- 5 (2) A person may resign as the safety and health representative for a designated work group by notice in writing delivered to the operator and to each work group employer.
- (3) If a person resigns as the safety and health representative for a designated work group, the person must notify the resignation to the group members.
- 10 (4) If a person has ceased to be the safety and health representative for a designated work group because of subclause (1)(b), the person must notify in writing —
- (a) the group members; and
 - (b) the operator and each work group employer,
- 15 that the person has ceased to be the safety and health representative for that designated work group.

30. Disqualification of safety and health representatives

- 20 (1) An application for the disqualification of a safety and health representative for a designated work group may be made to the Tribunal by —
- (a) the operator;
 - (b) a work group employer; or
 - (c) at the request of a group member of the designated work group — a workforce representative in relation to the designated work group.
- 25 (2) An application under subclause (1) may be made on either or both of the following grounds —
- (a) that action taken by the representative in the exercise or purported exercise of a power under clause 32(1) or any other provision of this Schedule was taken —
- 30 (i) with the intention of causing harm to the operator or work group employer or to an

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- undertaking of the operator or work group employer; or
- 5 (ii) unreasonably, capriciously or not for the purpose for which the power was conferred on the representative;
- 10 (b) that the representative has intentionally used, or disclosed to another person, for a purpose that is not connected with the exercise of a power of a safety and health representative, information acquired from the operator or work group employer.
- 15 (3) On an application under subclause (1), the Tribunal may disqualify the representative, for a specified period not exceeding 5 years, from being a safety and health representative for any designated work group, if the Tribunal is satisfied that the representative has acted in a manner referred to in subclause (2).
- 20 (4) In making a decision under subclause (3), the Tribunal must have regard to —
- (a) the harm (if any) that was caused to the operator or work group employer or to an undertaking of the operator or work group employer as a result of the action of the representative;
- 25 (b) the past record of the representative in exercising the powers of a safety and health representative;
- (c) the effect (if any) on the public interest of the action of the representative; and
- (d) any other matters the Tribunal thinks relevant.
- 31. Deputy safety and health representatives**
- 30 (1) One deputy safety and health representative may be selected for each designated work group for which a safety and health representative has been selected.
- (2) A deputy safety and health representative is to be selected in the same way as a safety and health representative under clause 23.

(3) If the safety and health representative for a designated work group —

- (a) ceases to be the safety and health representative; or
- (b) is unable (because of absence or for any other reason) to exercise the powers of a safety and health representative,

then —

- (c) the powers may be exercised by the deputy safety and health representative (if any) for the group; and
- (d) this Schedule (other than this clause) applies in relation to the deputy safety and health representative accordingly.

32. Powers of safety and health representatives

(1) A safety and health representative for a designated work group may, for the purpose of promoting or ensuring the safety and health at a workplace of the group members —

- (a) do all or any of the following —
 - (i) inspect the whole or any part of the workplace if there has, in the immediate past, been an accident or a dangerous occurrence at the workplace, or if there is an immediate threat of such an accident or dangerous occurrence;
 - (ii) inspect the whole or any part of the workplace if the safety and health representative has given reasonable notice of the inspection to the operator's representative and to any other person having immediate control of the workplace;
 - (iii) make a request to an inspector or to the Minister that an inspection be conducted at the workplace;
 - (iv) accompany an inspector during any inspection at the workplace by the inspector (whether or not the inspection is being

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- conducted as a result of a request made by the safety and health representative);
- 5 (v) if there is no safety and health committee in respect of the members of the workforce engaged in the petroleum operation — represent group members in consultations with the operator and any work group employer about the development, implementation and review of measures to ensure the safety and health of those members at the workplace;
- 10 (vi) if a safety and health committee has been established in respect of the members of the workforce engaged in the petroleum operation — examine any of the records of that committee;
- 15 (b) investigate complaints made by any group member to the safety and health representative about the safety and health of any of the members of the workforce (whether in the group or not);
- 20 (c) with the consent of a group member, be present at any interview about safety and health at work between that member and —
- 25 (i) an inspector;
- (ii) the operator or a person representing the operator; or
- (iii) a work group employer or a person representing that employer;
- 30 (d) obtain access to any information under the control of the operator or any work group employer —
- (i) relating to risks to the safety and health of any group member; and
- (ii) relating to the safety and health of any group member;
- 35 and
- (e) issue provisional improvement notices in accordance with clause 36.

- (2) Subclause (1)(d)(ii) has effect subject to clause 34.

33. Assistance by consultant

- 5 (1) A safety and health representative for a designated work group is entitled, in the exercise of his or her powers, to be assisted by a consultant.
- (2) A safety and health representative for a designated work group may —
- 10 (a) be assisted by a consultant at a workplace at which work is performed; or
- (b) provide to a consultant information that has been provided to the safety and health representative by a group member under clause 32(1)(d),
- 15 only if the operator or the Minister has, in writing, agreed to the provision of that assistance at that workplace or the provision of that information, as the case may be.
- (3) Neither the operator nor any workplace employer becomes, because of the agreement under subclause (2) to the provision of assistance by a consultant, liable for any remuneration or other expenses incurred in connection with the consultant's activities.
- 20 (4) If a safety and health representative for a designated work group is being assisted by a consultant, the consultant is entitled to be present with the representative at any interview, about safety and health at work, between a group member and —
- 25 (a) an inspector; or
- (b) the operator or any work group employer or a person representing the operator or that employer,
- 30 if, and only if, the group member consents to the presence of the consultant.

34. Information

- (1) Neither —
- (a) a safety and health representative; nor

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- (b) a consultant assisting a safety and health representative,

is entitled, under clause 32(1)(d)(ii), to have access to information in respect of which a group member is entitled to claim, and does claim, legal professional privilege.

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- (2) Neither —

- (a) a safety and health representative; nor
- (b) a consultant assisting a safety and health representative,

is entitled, under clause 32(1)(d)(ii), to have access to information of a confidential medical nature relating to a person who is or was a group member unless —

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- (c) the person has delivered to the operator or any work group employer a written authority permitting the safety and health representative, or the safety and health representative and the consultant, as the case requires, to have access to the information; or
- (d) the information is in a form that does not identify the person or enable the identity of the person to be discovered.

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35. Obligations and liabilities of safety and health representatives

This Schedule does not —

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

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36. Provisional improvement notices

(1) If —

(a) a safety and health representative for a designated work group believes, on reasonable grounds, that a person —

- (i) is contravening a listed OSH law; or
- (ii) has contravened a provision of a listed OSH law and is likely to contravene that provision again;

and

(b) the contravention affects or may affect one or more group members,

the representative must consult with the person supervising the relevant activity in an attempt to reach agreement on rectifying the contravention or preventing the likely contravention.

(2) If, in the safety and health representative’s opinion, agreement is not reached within a reasonable time, the safety and health representative may issue a provisional improvement notice to any or each person (a “**responsible person**”) responsible for the contravention.

(3) If a responsible person is the operator, the improvement notice may be issued to the operator by giving it to the operator’s representative.

(4) If it is not practicable to issue the notice to a responsible person (other than the operator or the supervisor) by giving it to that responsible person —

(a) the notice may be issued to that responsible person by giving it to the person who for the time being is, or may reasonably be presumed to be, on behalf of the responsible person, in charge of the activity to which the notice relates; and

(b) if the notice is so issued, a copy of the notice must be given to the responsible person as soon as practicable afterwards.

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- (5) The notice must —
 - (a) specify the contravention that, in the safety and health representative’s opinion, is occurring or is likely to occur, and set out the reasons for that opinion; and
 - (b) specify a period that —
 - (i) is not less than 7 days beginning on the day after the notice is issued; and
 - (ii) is, in the representative’s opinion, reasonable,

within which the responsible person is to take action necessary to prevent any further contravention or to prevent the likely contravention, as the case may be.
 - (6) The notice may specify action that the responsible person is to take during the period specified in the notice.
 - (7) If, in the safety and health representative’s opinion, it is appropriate to do so, the representative may, in writing and before the end of the period, extend the period specified in the notice.
 - (8) On issuing the notice, the safety and health representative must give a copy of the notice to —
 - (a) if the operator is not a responsible person — the operator;
 - (b) each work group employer other than a work group employer who is a responsible person;
 - (c) if the supervisor is not a responsible person — the supervisor; and
 - (d) if the notice relates to any plant, substance or thing that is owned by a person other than a responsible person or a person to whom a copy of the notice is given under paragraph (a), (b) or (c) — that owner.

37. Effect of provisional improvement notice

- (1) Within 7 days after a notice is issued under clause 36 —
 - (a) the responsible person; or

- (b) any other person, to whom a copy of the notice has been given under clause 36(8),
may request an inspector for an inspection of the matter to be conducted.
- 5 (2) On the request being made, the operation of the notice is suspended pending the determination of the matter by an inspector.
- 10 (3) As soon as possible after a request is made, an inspection must be conducted of the work that is the subject of the disagreement, and the inspector conducting the inspection must —
- 15 (a) confirm, vary or cancel the notice and notify the responsible person and any person to whom a copy of the notice has been given under clause 36(8) accordingly; and
- (b) make decisions, and exercise powers, under Division 4, as the inspector considers necessary in relation to the work.
- 20 (4) If the inspector varies a notice, the notice as so varied has effect —
- (a) so far as the notice concerns obligations imposed on the responsible person that are unaffected by the variation — as if the notice as so varied resumed effect on the day of the variation; and
- 25 (b) so far as the notice concerns new obligations imposed by virtue of the variation — as if the notice as so varied were a new notice issued on the day of the variation.
- 30 (5) If the notice is issued to a responsible person, the responsible person must —
- (a) notify each group member who is affected by the notice of the fact of the issue of the notice; and
- 35 (b) until the notice ceases to have effect, cause a copy of the notice to be displayed at or near each workplace at which the work that is the subject of the notice is being performed.

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- (6) The notice ceases to have effect if —
- (a) it is cancelled by an inspector or by the safety and health representative; or
 - (b) the responsible person —
 - (i) takes the action, if any, specified in the notice; or
 - (ii) if no action is so specified — takes the action necessary to prevent the further contravention, or likely contravention, concerned.
- (7) The responsible person —
- (a) must ensure that, to the extent that the notice relates to any matter over which the person has control, the notice is complied with; and
 - (b) must take reasonable steps to inform the safety and health representative who issued the notice of the action taken to comply with the notice.
- (8) For the purposes of clause 64, if the inspector confirms or varies the notice, the inspector is taken to have decided, under clause 60, to issue an improvement notice in those terms.
- 38. Duties of the operator and other employers in relation to safety and health representatives**
- (1) The operator of a petroleum operation, in relation to which a designated work group having a safety and health representative has been established, must —
- (a) on being requested to do so by the representative, consult with the representative on the implementation of changes at any workplace at which some or all of the group members perform work, being changes that may affect their safety and health;
 - (b) in relation to a workplace at which some or all of the group members perform work —
 - (i) permit the representative to make any inspection of the workplace that the

- 5 representative is entitled to make in
accordance with clause 32(1)(a)(i) and to
accompany an inspector during an
inspection at the workplace by the
inspector; and
- 10 (ii) if there is no safety and health committee in
respect of the members of the workforce —
on being requested to do so by the
representative, consult with the
representative about the development,
implementation and review of measures to
ensure the safety and health of group
members;
- 15 (c) permit the representative to be present at any
interview at which the representative is entitled to
be present under clause 32(1)(c);
- 20 (d) provide to the representative access to any
information to which the representative is entitled to
obtain access under clause 32(1)(d)(i) or (ii) and to
which access has been requested;
- (e) permit the representative to take any time off work,
without loss of remuneration or other entitlements,
that is necessary to exercise the powers of a safety
and health representative; and
- 25 (f) provide the representative with access to any
amenities that are —
- 30 (i) prescribed for the purposes of this
paragraph; or
- (ii) necessary for the purposes of exercising the
powers of a safety and health
representative.
- (2) Subclause (1)(d) has effect subject to subclauses (3) and (4).
- 35 (3) The operator must not permit a safety and health
representative in relation to a designated work group to have
access to information that —
- (a) is of a confidential medical nature under the control
of the operator; and

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- (b) relates to a person who is or was a group member,
unless —
 - (c) the person has delivered to the employer a written
authority permitting the representative to have
access to the information; or
 - (d) the information is in a form that does not identify
the person or enable the identity of the person to be
discovered.
- (4) The operator is not required to give a safety and health
representative access to any information in respect of which
the operator is entitled to claim, and does claim, legal
professional privilege.
- (5) The duties imposed by this clause on the operator in respect
of the safety and health representative for a designated work
group apply equally, to the extent that the matters to which
the duties relate are within the control of a work group
employer or of a supervisor of particular work, to that
employer and to that supervisor.

Subdivision 4 — Safety and health committees

39. Safety and health committees

- (1) A safety and health committee must be established in
relation to the members of the workforce engaged in a
petroleum operation if —
 - (a) the number of those members normally engaged in
the petroleum operation is not less than 50 (whether
or not those members are all at work in relation to
the petroleum operation at the same time);
 - (b) the members of the workforce are included in one
or more designated work groups; and
 - (c) the operator is requested to establish the committee
by the safety and health representative for the
designated work group or for one of the designated
work groups.

- (2) The safety and health committee consists of —
- (a) the number of members specified in an agreement reached between the operator and the members of the workforce; or
 - 5 (b) if there is no such agreement — an equal number of —
 - 10 (i) members, chosen by the members of the workforce, to represent the interests of members of the workforce; and
 - (ii) members, chosen by the operator, to represent the interests of the operator and the employer (other than the operator) of members of the workforce.
- (3) The agreement referred to in subclause (2)(a) may —
- 15 (a) specify the persons who are to be members to represent the interests of the operator and employers (other than the operator) of members of the workforce; and
 - 20 (b) provide for the way in which persons who are to be members to represent the interests of members of the workforce are to be chosen.
- (4) If regulations made for the purposes of this clause specify procedures for the selection of persons as members of safety and health committees to represent the interests of members of the workforce, an agreement referred to in subclause (2)(a) must not provide for members to be chosen in a way inconsistent with the regulations.
- (5) A safety and health committee must hold a meeting at least once every 3 months.
- 30 (6) The procedure at meetings of a safety and health committee must, except to the extent provided for by the regulations, be the procedure agreed upon by the committee.
- 35 (7) A safety and health committee must cause minutes of its meetings to be kept, and must retain those minutes for a period of not less than 3 years.

- (8) This clause does not prevent an operator from establishing, in consultation with registered unions or any other persons, committees concerned with occupational safety and health in relation to undertakings carried on by the operator.

5 **40. Functions of safety and health committees**

- (1) A safety and health committee has the following functions —
- (a) to assist the operator of the petroleum operation concerned —
 - 10 (i) to develop and implement measures designed to protect; and
 - (ii) to review and update measures used to protect,the safety and health at work of members of the workforce;
 - 15 (b) to facilitate cooperation between the operator of the petroleum operation, employers (other than the operator) of members of the workforce, and members of the workforce, in relation to occupational safety and health matters;
 - 20 (c) to assist the operator to disseminate among members of the workforce, in appropriate languages, information relating to safety and health at work;
 - 25 (d) any prescribed functions;
 - (e) any other functions that are agreed between the operator and the safety and health committee.
- (2) A safety and health committee has power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions.
- 30 (3) This Schedule does not —
- 35 (a) impose an obligation on a person to do any act, because the person is a member of a safety and health committee, in connection with the performance of a function conferred on the committee; or

- (b) render such a person liable in civil proceedings because of —
 - (i) a failure to do such an act; or
 - (ii) the manner in which such an act was done.

5 **41. Duties of the operator and other employers in relation to safety and health committees**

- (1) If there is a safety and health committee, the operator and any employer (other than the operator) of a member of the workforce must —
 - 10 (a) make available to the committee any information possessed by the operator or that employer relating to risks to safety and health to members of the workforce; and
 - 15 (b) permit any member of the committee who is a member of the workforce to take time off work, without loss of remuneration or other entitlements, as is necessary for the member adequately to participate in the performance by the committee of its functions.
- 20 (2) Subclause (1)(a) has effect subject to subclauses (3) and (4).
- (3) The operator or any employer (other than the operator) of a member of the workforce must not make available to a safety and health committee information of a confidential nature relating to a person who is or was a member of the workforce, unless —
 - 25 (a) the person has authorised the information to be made available to the committee; or
 - 30 (b) the information is in a form that does not identify the person or enable the identity of the person to be discovered.
- (4) The operator or any employer (other than the operator) of a member of the workforce is not required to make available to a safety and health committee any information in respect of which the operator or employer is entitled to claim, and does claim, legal professional privilege.
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Subdivision 5 — Emergency procedures

42. Action by safety and health representatives

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- (1) If a safety and health representative for a designated work group has reasonable cause to believe that there is an imminent and serious danger to the safety or health of any person engaged in the petroleum operation or any other protected person unless a group member or group members cease to perform particular work, the representative must —
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- (a) inform a person (a “**supervisor**”) supervising the group member or group members in the performance of the work of the danger; or
- (b) if no supervisor can be contacted immediately —
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- (i) direct the group member or group members to cease, in a safe manner, to perform the work; and
- (ii) as soon as practicable, inform a supervisor that the direction has been given.
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- (2) If a supervisor is informed under subclause (1)(a) of a danger to the safety or health of a person engaged in the petroleum operation or any other protected person, the supervisor must take the action he or she thinks appropriate to remove that danger, which may include directing a group member or group members to cease, in a safe manner, to perform the work.
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- (3) If —
- (a) a safety and health representative has informed a supervisor under subclause (1)(a) of a danger; and
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- (b) the representative has reasonable cause to believe that, despite any action taken by the supervisor in accordance with subclause (2), there continues to be an imminent and serious danger to the safety or health of a person engaged in the petroleum operation or any other protected person unless the group member or group members cease to perform particular work,
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the representative must —

- (c) direct the group member or group members to cease, in a safe manner, to perform the work; and
- (d) as soon as practicable, inform the supervisor that the direction has been given.

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(4) If —

- (a) a safety and health representative gives a direction under subclause (1)(b), but is unable to agree with a supervisor whom the representative has informed under that subclause that there is a need for a direction under that subclause; or
- (b) a safety and health representative gives a direction under subclause (3)(c),

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the representative or the supervisor may request an inspector that an inspection be conducted of the work that is the subject of the direction.

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(5) As soon as possible after a request is made, an inspection must be conducted of the work that is the subject of the direction, and the inspector conducting the inspection must make decisions, and exercise powers, under Division 4 as the inspector considers necessary in relation to the work.

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(6) This clause does not limit the power of a safety and health representative under clause 32(1)(a)(iii) to request an inspector that an inspection be conducted at the workplace.

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43. Directions to perform other work

If —

- (a) a group member who is an employee has ceased to perform work, in accordance with the direction of a safety and health representative under clause 42(1)(b) or (3)(c); and
- (b) the cessation of work does not continue after —
 - (i) the safety and health representative has agreed with a person supervising work at the workplace where the work was being

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performed that the cessation of work was not, or is no longer, necessary; or

- (ii) an inspector has, under clause 42(5), made a decision to the effect that the employee should perform the work,

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

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Subdivision 6 — Exemptions

44. Exemptions

- (1) The Minister may, in accordance with the regulations, make a written order exempting a specified person or class of person from any or all of the provisions of this Division (other than this clause).
- (2) The Minister must not make an order under subclause (1) unless the Minister is satisfied on reasonable grounds that it is impracticable for the person to comply with the provision or provisions.

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Division 4 — Inspections

Subdivision 1 — Introduction

45. Simplified outline

The following is a simplified outline of this Division —

- An inspector may conduct an inspection —
 - (a) to ascertain whether a listed OSH law is being complied with;
 - (b) concerning a contravention or a possible contravention of a listed OSH law; or
 - (c) concerning an accident or dangerous occurrence that has arisen out of a petroleum operation.

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- An inspector may issue a prohibition notice to the operator of a petroleum operation in order to remove an immediate threat to the safety and health of any person.
- 5 • An inspector may issue an improvement notice specifying action that is to be taken to prevent contravention of a listed OSH law.
- An inspector must prepare a report about an inspection and give the report to the Minister.

46. Powers, functions and duties of inspectors

- 10 (1) An inspector has the powers, functions and duties conferred or imposed by each listed OSH law.
- 15 (2) The Minister may give written directions specifying the manner in which, and the conditions subject to which, powers conferred on inspectors by a listed OSH law are to be exercised. If the Minister does so, the powers of inspectors must be exercised in accordance with those directions.
- 20 (3) The Minister may, by notice in writing, impose restrictions, not inconsistent with any direction in force under subclause (2), on the powers that are conferred on a particular inspector by a listed OSH law. If the Minister does so, the powers of the inspector are taken to have been restricted accordingly.

Subdivision 2 — Inspections

25 **47. Inspections**

- 30 (1) An inspector may, at any time, conduct an inspection —
 - (a) to ascertain whether a requirement of, or any requirement properly made under, a listed OSH law is being complied with;
 - (b) concerning a contravention or a possible contravention of a listed OSH law; or
 - (c) concerning an accident or dangerous occurrence that has arisen out of a petroleum operation.

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- (2) The Minister may direct an inspector to conduct an inspection —
- (a) to ascertain whether a requirement of, or any requirement properly made under, a listed OSH law is being complied with;
 - (b) concerning a contravention or a possible contravention of a listed OSH law; or
 - (c) concerning an accident or dangerous occurrence that has arisen out of a petroleum operation,

and the inspector must, unless the Minister revokes the direction, conduct an inspection accordingly.

Subdivision 3 — Powers of inspectors in relation to the conduct of inspections

48. Powers of entry and search — places at which petroleum operations are carried on

- (1) An inspector may, for the purposes of an inspection, at any reasonable time during the day or night —
- (a) enter the place at which a petroleum operation is carried on and to which the inspection relates and do all or any of the following —
 - (i) search the place;
 - (ii) inspect, examine, take measurements of, or conduct tests concerning, any workplace, facility, plant, substance or thing at the place;
 - (iii) take photographs of, make video recordings of, or make sketches of, any workplace, facility, plant, substance or thing at the place;
 - (iv) inspect, take extracts from, or make copies of, any documents at the place that the inspector has reasonable grounds to believe relate, or are likely to relate, to the subject matter of the inspection;

and

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- (b) inspect the seabed and subsoil in the vicinity of the place to which the inspection relates.
 - (2) Immediately on entering a place at which a petroleum operation is carried on for the purposes of an inspection, an inspector must take reasonable steps to notify the purpose of entering the place to —
 - (a) the operator’s representative; and
 - (b) if there is a safety and health representative for a designated work group having a group member likely to be affected by the matter the subject of the inspection — that representative,

and must, on being requested to do so by the person referred to in paragraph (a) or (b), produce for inspection by that person —

 - (c) the inspector’s certificate of appointment under section 118(2);
 - (d) a copy of the Minister’s written direction (if any) to conduct the inspection; and
 - (e) a copy of the restrictions (if any) imposed on the powers of the inspector under clause 46(3).
 - (3) If there is a safety and health representative for a designated work group having a group member likely to be affected by the matter the subject of the inspection, the inspector must afford the safety and health representative a reasonable opportunity to consult on the matter the subject of the inspection.

49. Powers of entry and search — regulated business premises (other than places where petroleum operations carried on)

- (1) An inspector may, for the purposes of an inspection —
 - (a) at any reasonable time, enter any regulated business premises (other than a place at which a petroleum operation is carried on) if the inspector has reasonable grounds to believe that there are likely to be at those premises documents that relate to a

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petroleum operation that is a subject of the inspection; and

- (b) search for, inspect, take extracts from, or make copies of, any such documents at those premises.

5 (2) Immediately on entering premises referred to in subclause (1), an inspector must take reasonable steps to notify the purpose of the entry to the occupier of those premises, and must, on being requested to do so by the occupier, produce for inspection by the occupier —

- 10 (a) the inspector's certificate of appointment under section 118(2);
- (b) a copy of the Minister's written direction (if any) to conduct the inspection; and
- 15 (c) a copy of the restrictions (if any) imposed on the powers of the inspector under clause 46(3).

50. Powers of entry and search — premises (other than regulated business premises)

(1) An inspector may, for the purposes of an inspection —

- 20 (a) enter any premises (other than regulated business premises) if the inspector has reasonable grounds to believe that there are likely to be at those premises documents that relate to a petroleum operation that is the subject of the inspection; and
- 25 (b) search for, inspect, take extracts from, or make copies of, any such documents at those premises.

(2) An inspector may exercise the powers referred to in subclause (1) to enter premises only —

- 30 (a) if the premises are not a residence —
 - (i) in accordance with a warrant under clause 51;
 - (ii) with the consent of the occupier of the premises;
- or
- 35 (b) if the premises are a residence — with the consent of the occupier of the premises.

- (3) Immediately on entering premises referred to in subclause (1), an inspector must —
- (a) take reasonable steps to notify the purpose of the entry to the occupier of those premises;
 - 5 (b) take reasonable steps to produce, for inspection by the occupier, the inspector's certificate of appointment under section 118(2); and
 - (c) on being requested to do so by the occupier, produce, for inspection by the occupier —
 - 10 (i) a copy of the Minister's written direction (if any) to conduct the inspection; and
 - (ii) a copy of the restrictions (if any) imposed on the powers of the inspector under clause 46(3).
- 15 (4) If —
- (a) an inspector enters premises in accordance with a warrant under clause 51; and
 - (b) the occupier of the premises is present at the premises,
- 20 the inspector must make a copy of the warrant available to the occupier.
- (5) Before obtaining the consent of a person as mentioned in subclause (2)(a) or (b), an inspector must inform the person that —
- 25 (a) the person may refuse consent; and
 - (b) the consent may be withdrawn.
- (6) The consent of a person is not effective for the purposes of subclause (2) unless the consent is voluntary.

30 **51. Warrant to enter premises (other than regulated business premises)**

- (1) An inspector may apply to a magistrate for a warrant authorising the inspector, with any assistance as the inspector thinks necessary, to exercise the powers referred

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to in clause 50(1) in relation to particular premises (other than a residence).

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- (2) The application must be supported by evidence on oath (whether oral or by affidavit) that sets out the grounds on which the inspector is applying for the warrant.
- (3) If the magistrate is satisfied that there are reasonable grounds for issuing the warrant, the magistrate may issue the warrant.
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- (4) A warrant issued under subclause (3) must state —
- (a) the name of the inspector;
- (b) whether the inspection may be carried out at any time or only during specified hours of the day;
- (c) the day on which the warrant ceases to have effect; and
- 15
- (d) the purposes for which the warrant is issued.
- (5) The day specified under subclause (4)(c) is not to be more than 7 days after the day on which the warrant is issued.
- (6) The purposes specified under subclause (4)(d) must include the identification of the premises in relation to which the warrant is issued.
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52. Obstructing or hindering inspector

A person must not, without reasonable excuse, obstruct or hinder an inspector in the exercise of an inspector's powers under clause 48, 49 or 50.

Penalty: \$5 500.

53. Power to require assistance and information

- (1) An inspector may, to the extent that it is reasonably necessary to do so in connection with the conduct of an inspection, require —
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- (a) the operator of a petroleum operation;
- (b) the person in charge of a petroleum operation;

- (c) a member of the workforce engaged in a petroleum operation; or
- (d) any person representing a person referred to in paragraph (a) or (b),
- 5 to provide the inspector with reasonable assistance and amenities —
- (e) that is or are reasonably connected with the conduct of the inspection in relation to the petroleum operation; or
- 10 (f) for the effective exercise of the inspector's powers under this Schedule in connection with the conduct of the inspection in relation to the petroleum operation.
- (2) The reasonable assistance referred to in subclause (1) includes, so far as the operator of a petroleum operation is concerned —
- 15 (a) appropriate transport for the inspector to and from the place to be inspected and for any equipment required by the inspector, or any article of which the inspector has taken possession; and
- 20 (b) reasonable accommodation and means of subsistence while the inspector is at the place to be inspected.
- (3) A person must not fail, without reasonable excuse, to comply with a requirement under this clause.
- 25 Penalty: \$3 300 or imprisonment for 6 months or both.

54. Power to require the answering of questions and the production of documents or articles

- (1) If —
- 30 (a) an inspector believes on reasonable grounds that a person is capable of answering a question that is reasonably connected with the conduct of an inspection; and

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- 5 (b) the person is —
- (i) the operator of a petroleum operation;
 - (ii) the person in charge of a petroleum operation;
 - 10 (iii) a member of the workforce engaged in a petroleum operation; or
 - (iv) any person representing a person referred to in subparagraph (i) or (ii),
- the inspector may, to the extent that it is reasonably necessary to do so in connection with the conduct of the inspection, require the person to answer the question put by the inspector.
- 15 (2) If, at the time when a requirement under subclause (1) is imposed on a person, the person is not physically present on regulated business premises, the person is not obliged to comply with the requirement unless the requirement —
- (a) is in writing;
 - (b) specifies the day on or before which the question is to be answered (being at least 14 days after the day on which the requirement is imposed); and
 - 20 (c) is accompanied by a statement to the effect that a failure to comply with the requirement is an offence.
- 25 (3) If —
- (a) an inspector believes on reasonable grounds that a person is capable of producing a document or article that is reasonably connected with the conduct of an inspection; and
 - (b) the person is —
- 30 (i) the operator of a petroleum operation;
 - (ii) the person in charge of a petroleum operation;
 - (iii) a member of the workforce engaged in a petroleum operation; or

- (iv) any person representing a person referred to in subparagraph (i) or (ii),

the inspector may, to the extent that it is reasonably necessary to do so in connection with the conduct of the inspection, require the person to produce the document or article.

- (4) If, at the time when a requirement under subclause (3) is imposed on a person, the person is not physically present on regulated business premises, the person is not obliged to comply with the requirement unless the requirement —

- (a) is in writing;
- (b) specifies the day on or before which the document or article is to be produced (being at least 14 days after the day on which the requirement is imposed); and
- (c) is accompanied by a statement to the effect that a failure to comply with the requirement is an offence.

- (5) A person must not —

- (a) fail, without reasonable excuse, to comply with a requirement under this clause; or
- (b) in purported compliance with a requirement under this clause, give information that is false or misleading in a material particular.

Penalty: \$3 300 or imprisonment for 6 months or both.

55. Privilege against self-incrimination

- (1) A person is not excused from answering a question or producing a document or article when required to do so under clause 54 on the ground that the answer to the question, or the production of the document or article, may tend to incriminate the person or make the person liable to a penalty.

- (2) However —

- (a) the answer given or document or article produced;

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- 5
- (b) answering the question or producing the document or article; or
 - (c) any information, document or thing obtained as a direct or indirect consequence of the answering of the question or the production of the document or article,
- is not admissible in evidence against the person —
- (d) in any civil proceedings; or
 - (e) in any criminal proceedings other than proceedings for an offence against clause 54.
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56. Power to take possession of plant, take samples of substances etc.

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- (1) In conducting an inspection, an inspector may, to the extent that it is reasonably necessary for the purposes of inspecting, examining, taking measurements of or conducting tests concerning, any plant, substance or thing at a place at which a petroleum operation is carried out in connection with the inspection —
 - 20 (a) take possession of the plant, substance or thing and remove it from the place; or
 - (b) take a sample of the substance or thing and remove that sample from the place.
 - (2) On taking possession of plant, a substance or a thing, or taking a sample of a substance or thing, the inspector must, by notice in writing, inform —
 - 25 (a) the operator of the petroleum operation;
 - (b) if the plant, substance or thing is used for the performance of work by an employer of a member or members of the workforce engaged in the petroleum operation other than the operator of the petroleum operation — that employer;
 - 30 (c) if the plant, substance or thing is owned by a person other than a person mentioned in paragraph (a) or (b) — that person; and

- 5 (d) if there is a safety and health representative for a designated work group that includes a member of the workforce who is affected by the matter to which the inspection relates — that representative, of the taking of possession or the taking of the sample, as the case may be, and the reasons for it.
- 10 (3) If the inspector gives the notice to the operator of the petroleum operation to which the inspection relates, the operator's representative must cause the notice to be displayed in a prominent place at the workplace from which the plant, substance or thing was removed.
- 15 (4) If the inspector takes possession of plant, a substance or a thing at a workplace for the purpose of inspecting, examining, taking measurements of or conducting tests concerning, the plant, substance or thing, the inspector must —
- 20 (a) ensure that the inspection, examination, measuring or testing is conducted as soon as practicable; and
- (b) return it to the workplace as soon as practicable afterwards.
- 25 (5) As soon as practicable after completing any such inspection, examination, measurement or testing, the inspector must give a written statement setting out the results to each person whom the inspector is required to notify under subclause (2).

57. Power to direct that workplace etc. not be disturbed

- 30 (1) An inspector may give a direction under subclause (2) if, in conducting an inspection, the inspector has reasonable grounds to believe that it is reasonably necessary to do so in order to —
- (a) remove an immediate threat to the safety or health of any person; or
- (b) allow the inspection, examination or taking of measurements of, or conducting of tests concerning,

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a facility, or any plant, substance or thing, for use in a petroleum operation.

- 5 (2) If subclause (1) applies, the inspector may direct, by written notice given to the operator's representative, that the operator must ensure that —
- (a) a particular workplace; or
 - (b) particular plant, or a particular substance or thing,
- not be disturbed for a period specified in the direction.
- 10 (3) The period specified in the direction must be a period that the inspector has reasonable grounds to believe is necessary in order to remove the threat or to allow the inspection, examination, measuring or testing to take place.
- (4) The direction may be renewed by another direction in the same terms.
- 15 (5) If an inspector gives a notice to the operator's representative under subclause (2), the operator's representative must cause the notice to be displayed in a prominent place at the workplace —
- (a) that is to be left undisturbed; or
 - 20 (b) where the plant, substance or thing that is to be left undisturbed is located.
- (6) As soon as practicable after giving the direction, the inspector must take reasonable steps to notify —
- 25 (a) if the workplace, plant, substance or thing to which the direction relates is owned by a person other than the operator of the petroleum operation — that person; and
 - (b) if there is a safety and health representative for a designated work group that includes a group
- 30 member performing work —
- (i) at a workplace; or
 - (ii) involving the plant, substance or thing, to which the direction relates — that representative,
- of the direction and the reasons for giving it.

- (7) The operator of a petroleum operation to which a direction concerning a workplace, plant, substance or a thing relates must ensure that the direction is complied with.

Penalty: \$27 500.

- 5 (8) A direction under subclause (2) must be accompanied by a statement setting out the reasons for the direction.

58. Power to issue prohibition notices

- 10 (1) If, having conducted an inspection, an inspector is satisfied on reasonable grounds that it is reasonably necessary to issue a prohibition notice to the operator of a petroleum operation in order to remove an immediate threat to the safety or health of any person, the inspector may issue a prohibition notice, in writing, to the operator.

- 15 (2) The notice must be issued to the operator by giving it to the operator's representative.

- (3) The notice must —

- 20 (a) specify the activity in respect of which, in the inspector's opinion, the threat to safety or health has arisen, and set out the reasons for that opinion; and
(b) either —
(i) direct the operator to ensure that the activity is not engaged in; or
(ii) direct the operator to ensure that the activity is not engaged in in a specified manner.

- 25 (4) A specified manner may relate to any one or more of the following —

- 30 (a) any workplace, or part of a workplace, at which the activity is not to be engaged in;
(b) any plant or substance that is not to be used in connection with the activity;
(c) any procedure that is not to be followed in connection with the activity.

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- (5) The notice may specify action that may be taken to satisfy an inspector that adequate action has been taken to remove the threat to safety and health.
- (6) The operator's representative must —
- 5 (a) give a copy of the notice to each safety and health representative (if any) for any designated work group having group members performing work that is affected by the notice; and
- 10 (b) cause a copy of the notice to be displayed at a prominent place at or near each workplace at which that work is performed.
- (7) If the notice relates to any workplace, plant, substance or thing that is owned by a person other than the operator, the inspector must, upon issuing the notice, give a copy of the notice to that person.
- 15

59. Compliance with prohibition notice

- (1) An operator must ensure that a prohibition notice issued to the operator is complied with.
Penalty: \$27 500.
- 20 (2) If an inspector is satisfied that action taken by the operator to remove the threat to safety and health in respect of which the notice was issued is not adequate, the inspector must inform the operator accordingly.
- 25 (3) A prohibition notice ceases to have effect when an inspector notifies the operator that the inspector is satisfied that the operator has taken adequate action to remove the threat to safety or health.
- 30 (4) In making a decision under subclause (2), an inspector may exercise any of the powers of an inspector conducting an inspection that the inspector considers necessary for the purposes of making the decision.

60. Power to issue improvement notices

- (1) If, in conducting an inspection, an inspector believes on reasonable grounds that a person —
- (a) is contravening a listed OSH law; or
 - (b) has contravened a provision of a listed OSH law and is likely to contravene that provision again,
- the inspector may issue an improvement notice, in writing, to the person (the “**responsible person**”).
- (2) If the responsible person is the operator, the improvement notice may be issued to the operator by giving it to the operator’s representative.
- (3) If the responsible person is an employer (other than the operator) of members of the workforce, but it is not practicable to give the notice to that employer —
- (a) the improvement notice may be issued to the employer by giving it to the operator’s representative; and
 - (b) if the notice is so issued — the operator must ensure that a copy of the notice is given to the employer as soon as practicable afterwards.
- (4) The notice —
- (a) must specify the contravention that the inspector believes is occurring or is likely to occur, and set out the reasons for that belief;
 - (b) must specify a reasonable period within which the responsible person is to take the action necessary to prevent any further contravention or to prevent the likely contravention, as the case may be; and
 - (c) may specify action that the responsible person is to take during the period specified in the notice.
- (5) If the inspector believes on reasonable grounds that it is appropriate to do so, the inspector may, in writing and before the end of the period, extend the period specified in the notice.

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- (6) If an improvement notice is issued to an employer (other than the operator) of members of the workforce in circumstances other than the circumstance referred to in subclause (3), the employer must immediately ensure that a copy of the notice is given to the operator's representative.
- (7) If a notice is issued to the operator or to an employer (other than the operator) of members of the workforce, the operator's representative must —
- 10
- (a) give a copy of the notice to each safety and health representative for a designated work group having group members performing work that is affected by the notice; and
- (b) cause a copy of the notice to be displayed in a prominent place at or near each workplace at which the work is being performed.
- 15
- (8) On issuing a notice, the inspector must give a copy of the notice to —
- (a) if the notice is —
- 20
- (i) given to a member of the workforce who is an employee; and
- (ii) in connection with work performed by the employee, the employer of that employee;
- (b) if the notice relates to any workplace, plant, substance or thing that is owned by a person other than —
- 25
- (i) a responsible person; or
- (ii) a person who is an employer referred to in paragraph (a),
- 30
- that owner; and
- (c) if the notice is issued to a person who owns any workplace, plant, substance or thing, because of which a contravention of a listed OSH law has occurred or is likely to occur —
- 35
- (i) the operator of the petroleum operation; and

- (ii) if the employer of employees who work in that workplace or who use that plant, substance or thing is a person other than the operator — that employer.

5 **61. Compliance with improvement notice**

A person to whom an improvement notice is issued must comply with it to the extent that the notice relates to any matter over which the person has control.

Penalty: \$11 000.

10 **62. Notices not to be tampered with or removed**

(1) A person must not, without reasonable excuse, tamper with any notice that has been displayed under clause 56(3), 57(5), 58(6) or 60(7) while that notice is so displayed.

15 (2) If a notice has been displayed under clause 56(3), a person must not, without reasonable excuse, remove the notice until the plant or thing to which the notice relates is returned to the workplace from which it was removed.

20 (3) If a notice has been displayed under clause 57(5), 58(6) or 60(7), a person must not, without reasonable excuse, remove the notice before it has ceased to have effect.

Penalty applicable to subclauses (1), (2) and (3): \$11 000.

Subdivision 4 — Reports on inspections

63. Reports on inspections

25 (1) If an inspector has conducted an inspection, the inspector must, as soon as practicable, prepare a written report relating to the inspection and give the report to the Minister.

(2) The report must include —

- 30 (a) the inspector's conclusions from conducting the inspection and the reasons for those conclusions;
- (b) any recommendations that the inspector wishes to make arising from the inspection; and
- (c) any other prescribed matters.

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- (3) As soon as practicable after receiving the report, the Minister must give a copy of the report, together with any written comments that the Minister wishes to make —
- (a) to the operator of the petroleum operation to which the report relates;
- (b) if the report relates to activities performed by an employee of another person — that other person; and
- 10 (c) if the report relates to any plant, substance or thing owned by another person — that other person.
- (4) The Minister may, in writing, request the operator or any other person to whom the report is given to provide to the Minister, within a reasonable period specified in the request, details of —
- 15 (a) any action proposed to be taken as a result of the conclusions or recommendations contained in the report; and
- (b) if a notice has been issued under clause 58 or 60 in relation to work being performed for the operator or that other person — any action taken, or proposed to be taken, in respect of that notice,
- 20 and the operator or that other person must comply with the request.
- (5) As soon as practicable after receiving a report, the operator of the petroleum operation must give a copy of the report, together with any written comment made by the Minister on the report —
- 25 (a) if there is at least one safety and health committee in respect of some or all of the members of the workforce — to each such committee; and
- 30 (b) if there is no such committee in respect of some or all of the members of the workforce, but some or all of those members (in respect of which there is no such committee) are in at least one designated work group for which there is a safety and health representative — to each such safety and health representative.
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Subdivision 5 — Reviews of inspectors' decisions

64. Reviews of inspectors' decisions

(1) If an inspector, in conducting an inspection or having conducted an inspection —

- 5 (a) decides, under clause 37, to confirm or vary a provisional improvement notice;
- (b) decides, under clause 56, to take possession of plant, a substance or a thing at a workplace;
- 10 (c) decides, under clause 57, to direct that a workplace, a part of a workplace, plant, a substance or a thing not be disturbed;
- (d) decides, under clause 58, to issue a prohibition notice;
- 15 (e) decides, under clause 59, that the operator of a petroleum operation to whom a prohibition notice has been issued has not taken adequate action to remove the threat to safety and health that caused the notice to be issued; or
- 20 (f) decides, under clause 60, to issue an improvement notice,

a person referred to in subclause (2) may apply in writing to the reviewing authority for a review of the decision.

(2) The following persons may apply for a review of the decision, as is relevant to the case —

- 25 (a) the operator of the petroleum operation or any employer (other than the operator) who is affected by the decision;
- (b) a person to whom a notice has been issued under clause 36(2) or 60(1);
- 30 (c) the safety and health representative for a designated work group having a group member affected by the decision;
- (d) a workforce representative in relation to the designated work group that includes a group member who is affected by the decision and who
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- has requested the workforce representative to apply for a review of the decision;
- 5 (e) if there is no such designated work group, and a member of the workforce affected by the decision has requested a workforce representative in relation to the member to apply for the review of the decision — that workforce representative;
- 10 (f) a person who owns any workplace, plant, substance or thing to which the decision referred to in subclause (1)(a), (b), (c) or (f) relates.
- (3) If an inspector, having conducted an inspection —
- (a) decides under clause 37 to cancel a provisional improvement notice; or
- 15 (b) decides under clause 59 that the operator of a petroleum operation to whom a prohibition notice has been issued has taken adequate action to remove the threat to safety and health that caused the notice to be issued,
- 20 the following persons may apply in writing for a review of the decision, as is relevant in the case —
- (c) the safety and health representative for a designated work group having a group member affected by the decision;
- 25 (d) a workforce representative in relation to the designated work group that includes a group member who is affected by the decision and who has requested the workforce representative to apply for a review of the decision;
- 30 (e) if there is no such designated work group, and a member of the workforce affected by the decision has requested a workforce representative in relation to the member to apply for a review of the decision — that workforce representative.
- (4) An application under subclause (2) or (3) must be made —
- 35 (a) not later than 7 days after the day on which the person applying received notice of the inspector's decision; or

- (b) within such further period as the reviewing authority may allow.
- 5 (5) A person, other than the operator of the petroleum operation concerned, who applies for a review of a decision must, as soon as is practicable, give a copy of the application to the operator.
Penalty: \$5 000.
- 10 (6) The reviewing authority is to give notice in writing of the decision on the reference and the reasons for the decision to —
- (a) the person who referred the matter for review; and
- (b) if that person is not the operator of the petroleum operation concerned, to the operator.
- 15 (7) Subject to this clause, applying for a review of a decision does not affect the operation of the decision or prevent the taking of action to implement that decision, except to the extent that the reviewing authority makes an order to the contrary.
- 20 (8) If the decision to be reviewed is a decision under clause 60 to issue an improvement notice, the operation of the notice is suspended pending determination of the review, except to the extent that the reviewing authority makes an order to the contrary.
- 25 (9) If the decision to be reviewed is a decision of an inspector under clause 37 to confirm or vary a provisional improvement notice whose operation has been suspended pending the inspection of the matter to which the notice relates, the operation of the notice is further suspended pending determination of the review, except to the extent
- 30 that the reviewing authority makes an order to the contrary.
- (10) In this clause —
- “**reviewing authority**” means a person prescribed by the regulations to be a reviewing authority for the purposes of this clause.

65. Powers of reviewing authority on review

- (1) On a review of a decision under clause 64, the reviewing authority may —
- (a) affirm the decision;
 - (b) affirm the decision with such modifications as the reviewing authority considers appropriate; or
 - (c) revoke the decision and make such other decision with respect to the matter as the reviewing authority thinks fit,

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and the decision has effect or, as the case may be, ceases to have effect accordingly.

- (2) If —
- (a) the decision being reviewed is a decision under clause 56 to take possession of plant, a substance or a thing at a workplace; and
 - (b) the decision is not affirmed,

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the inspector who made the decision must ensure that, to the extent that the decision is not affirmed, the plant, substance or thing is returned to the workplace as soon as practicable.

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Division 5 — Referrals to the Tribunal

66. Decision may be referred to Tribunal

- (1) If a person given notice of a decision under clause 21(3)(b) or 64(6) is not satisfied with the reviewing authority's decision under that section, the person may refer the decision to the Tribunal for further review.
- (2) A reference under subclause (1) must be made —
- (a) not later than 7 days after the day on which the person received notice of the decision; or
 - (b) within such further period as the Tribunal may allow.
- (3) A person, other than the operator of the petroleum operation concerned, who refers a matter for review under this clause

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must, as soon as is practicable, give a copy of the duly completed prescribed form to the operator.

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

67. Determination by Tribunal

- 5 (1) On a reference under clause 66, the Tribunal is to inquire into the circumstances relating to the decision, and may —
- (a) affirm the decision of the reviewing authority;
- 10 (b) affirm the decision of the reviewing authority with such modifications as the Tribunal considers appropriate; or
- (c) revoke the decision of the reviewing authority and make such other decision with respect to the notice as the Tribunal thinks fit,

15 and the decision has effect or, as the case may be, ceases to have effect accordingly.

- (2) A review under this clause —
- (a) is to be in the nature of a rehearing; and
- (b) is to be completed by the Tribunal as quickly as is practicable.
- 20 (3) The Tribunal is to give notice in writing of its decision on the reference and the reasons for the decision to —
- (a) the person who referred the matter for review; and
- (b) if that person is not the operator of the petroleum operation concerned, to the operator.

25 **68. Effect of pending review by Tribunal**

- (1) Subject to this clause, a reference to the Tribunal for further review of a decision does not affect the operation of the decision or prevent the taking of action to implement that decision, except to the extent that the Tribunal makes an order to the contrary.
- 30 (2) If the decision to be reviewed concerns a decision under clause 60 to issue an improvement notice, the operation of the notice is suspended pending determination of the review,

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except to the extent that the Tribunal makes an order to the contrary.

- (3) If the decision to be reviewed concerns a decision of an inspector under clause 37 to confirm or vary a provisional improvement notice whose operation has been suspended pending the inspection of the matter to which the notice relates, the operation of the notice is further suspended pending determination of the review, except to the extent that the Tribunal makes an order to the contrary.

10 **69. Jurisdiction of Tribunal**

- (1) This clause applies where —
- (a) under clause 66 a matter is referred to the Tribunal; or
 - (b) under clause 30 an application is made to the Tribunal.

- (2) Where this clause applies —
- (a) the matter or application may be heard and determined; and
 - (b) a determination made by the Tribunal on the matter or application has effect, and may be appealed against and enforced,

as if it were —

- (c) a matter in respect of which jurisdiction is conferred on the Tribunal by Part VIB of the *Occupational Safety and Health Act 1984*; or
 - (d) a determination made for the purposes of that Part.
- (3) The provisions of —
- (a) Part VIB of the *Occupational Safety and Health Act 1984*; and
 - (b) the *Industrial Relations Act 1979* applied by that Part,

have effect for the purposes of this clause with all necessary changes.

- 5 (4) In the operation of subclause (3), section 51J(1) of the *Occupational Safety and Health Act 1984* has effect as if it were expressed to apply where a matter has been referred to the Tribunal under clause 66 in relation to a decision made under clause 21.

Division 6 — General

70. Notifying and reporting accidents and dangerous occurrences

- 10 (1) If, arising from a petroleum operation, there is —
- 15 (a) an accident that causes the death of, or serious personal injury to, any person;
 - (b) an accident that causes a member of the workforce to be incapacitated from performing work for a period prescribed for the purposes of this paragraph; or
 - 20 (c) a dangerous occurrence,
- the operator must, in accordance with the regulations, give the Minister notice of, and a report about, the accident or dangerous occurrence.
- 20 Penalty: \$5 000.
- (2) Regulations made for the purposes of subclause (1) (other than regulations made for the purpose of subclause (1)(b)) may prescribe —
- 25 (a) the time within which, and the manner in which, notice of an accident or dangerous occurrence is to be given, and the form of the notice; and
 - (b) the time within which, and the manner in which, a report of an accident or dangerous occurrence is to be given, and the form of the report.
- 30 (3) Subclause (2) does not limit regulations that may be made for the purposes of subclause (1).

71. Records of accidents and dangerous occurrences to be kept

- 5 (1) The operator of a petroleum operation must maintain, in accordance with the regulations, a record of each accident or dangerous occurrence in respect of which the operator is required by clause 67 to notify the Minister.
- 10 (2) Regulations made for the purposes of subclause (1) may prescribe —
- (a) the nature of the contents of a record maintained under this clause; and
- (b) the period for which the record must be retained.
- (3) Subclause (2) does not limit regulations that may be made for the purposes of subclause (1).

72. Codes of practice

- 15 (1) The regulations may prescribe codes of practice for the purpose of providing practical guidance to operators of petroleum operations and employers (other than operators) of members of the workforce engaged in petroleum operations.
- 20 (2) A person is not liable in any civil or criminal proceedings for contravening a code of practice.

73. Use of codes of practice in proceedings

- 25 (1) This clause applies if, in any proceedings for an offence against a listed OSH law, it is alleged that a person contravened a provision of a listed OSH law in relation to which a code of practice was in effect at the time of the alleged contravention.
- (2) The code of practice is admissible in evidence in those proceedings.
- 30 (3) If the court is satisfied, in relation to any matter which it is necessary for the prosecution to prove in order to establish the alleged contravention, that —
- (a) any provision of the code of practice is relevant to that matter; and

- (b) the person failed at any material time to comply with that provision of the code of practice,

that matter is treated as proved unless the court is satisfied that in respect of that matter the person complied with that provision of the listed OSH law otherwise than by complying with the code of practice.

74. Interference etc. with equipment etc.

A person must not, without reasonable excuse, do anything that results in the interference with, or the rendering ineffective of, any protective equipment or safety device provided for the occupational safety and health of members of the workforce engaged in a petroleum operation if the person knew (or ought reasonably to have known) that the equipment or device was protective equipment or a safety device.

Penalty: \$3 300 or imprisonment for 6 months or both.

75. No charges to be levied on members of workforce

The operator of a petroleum operation or an employer (other than the operator) of members of the workforce engaged in a petroleum operation must not levy, or permit to be levied, on a member of the workforce any charge in respect of anything done or provided in accordance with a listed OSH law in order to ensure the occupational safety and health of persons engaged in the petroleum operation or any other protected persons.

Penalty: \$27 500.

76. Victimisation

- (1) An employer (whether the operator or another person) must not —

- (a) dismiss an employee;
- (b) perform an act that results in injury to an employee in his or her employment;
- (c) perform an act that prejudicially alters the employee's position (whether by deducting or

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withholding remuneration or by any other means);
or

(d) threaten to do any of those things,

because the employee —

- 5 (e) has complained or proposes to complain about a
 matter concerning the safety or health of employees
 at work;
- 10 (f) has assisted or proposes to assist, by giving
 information or otherwise, the conduct of an
 inspection; or
- 15 (g) has ceased, or proposes to cease, to perform work,
 in accordance with a direction by a safety and
 health representative under clause 42(1)(b) or
 (3)(c), and the cessation or proposed cessation does
 not continue after —
- (i) the safety and health representative has
 agreed with a person supervising the work
 that the cessation or proposed cessation was
 not, or is no longer, necessary; or
- 20 (ii) an inspector has, under clause 42(5), made a
 decision that has the effect that the
 employee should perform the work.

Penalty: \$27 500.

- 25 (2) In proceedings for an offence against subclause (1), if all the
 relevant facts and circumstances, other than the reason for
 an action alleged in the charge, are proved, the defendant
 has the onus of establishing that the action was not taken for
 that reason.

77. Institution of prosecutions

- 30 (1) Proceedings for an offence against a listed OSH law may be
 instituted by an inspector but an inspector is not to be
 personally responsible for any costs incurred by or awarded
 against the inspector in connection with any proceeding for
 an offence against a listed OSH law.

- (2) A safety and health representative for a designated work group may request an inspector to institute proceedings for an offence against a listed OSH law in relation to the occurrence of an act or omission if —
- 5 (a) a period of 6 months has elapsed since the act or omission occurred;
- (b) the safety and health representative considers that the occurrence of the act or omission constitutes an offence against a listed OSH law; and
- 10 (c) proceedings in respect of the offence have not been instituted.
- (3) A workforce representative in relation to a designated work group may request an inspector to institute proceedings for an offence against a listed OSH law in relation to the occurrence of an act or omission if —
- 15 (a) a period of 6 months has elapsed since the act or omission occurred;
- (b) the workforce representative considers that the occurrence of the act or omission constitutes an offence against a listed OSH law;
- 20 (c) proceedings in respect of the offence have not been instituted; and
- (d) a group member included in the group requests the workforce representative to request an inspector to institute the proceedings.
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- (4) A request under subclause (2) or (3) must be in writing.
- (5) An inspector must, within 3 months after receiving the request, advise the safety and health representative or the workforce representative, as the case may be, whether proceedings under subclause (1) have been or will be instituted, and, if not, give reasons why not.
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78. Conduct of directors, employees and agents

- (1) This clause has effect for the purposes of a proceeding for an offence against a listed OSH law.

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- (2) If it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show —
- 5 (a) that the conduct was engaged in by a director, employee or agent of the body corporate within the scope of actual or apparent authority; and
- (b) that the director, employee or agent had the state of mind.
- (3) Any conduct engaged in on behalf of a body corporate by a director, employee or agent of the body corporate within the scope of actual or apparent authority is taken to have been engaged in also by the body corporate unless it establishes that it took reasonable precautions and exercised due diligence to avoid the conduct.
- 10
- (4) If it is necessary to establish the state of mind of a natural person in relation to particular conduct, it is sufficient to show —
- 15 (a) that the conduct was engaged in by an employee or agent of the natural person within the scope of actual or apparent authority; and
- 20 (b) that the employee or agent had the state of mind.
- (5) Any conduct engaged in on behalf of a natural person by an employee or agent of the natural person within the scope of actual or apparent authority is taken to have been engaged in also by the natural person unless the natural person establishes that he or she took reasonable precautions and exercised due diligence to avoid the conduct.
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- (6) If —
- 30 (a) a natural person is found guilty of an offence; and
- (b) he or she would not have been found guilty of the offence if subclauses (4) and (5) had not been enacted,
- he or she is not liable to be punished by imprisonment for that offence.

- (7) A reference in subclause (2) or (4) to the state of mind of a person includes a reference to —
- (a) the person’s knowledge, intention, opinion, belief or purpose; and
 - (b) the person’s reasons for the intention, opinion, belief or purpose.

79. Act not to give rise to other liabilities etc.

This Schedule does not —

- (a) confer a right of action in any civil proceeding in respect of any contravention of a listed OSH law; or
- (b) confer a defence to an action in any civil proceeding or otherwise affect a right of action in any civil proceeding.

80. Circumstances preventing compliance may be defence to prosecution

It is a defence to a prosecution for a contravention of a listed OSH law if the defendant proves that it was not practicable to comply with it because of an emergency prevailing at the relevant time.

81. Regulations — general

- (1) The regulations may prescribe any of the following —
- (a) procedures for the selection of persons, under clause 39, as members of safety and health committees, to represent the interests of members of the workforce engaged in a petroleum operation;
 - (b) procedures to be followed at meetings of safety and health committees;
 - (c) the manner in which notices are to be served under this Schedule or the regulations;
 - (d) the practice and procedure to be followed in relation to the review of decisions under clause 21 or 64 by reviewing authorities;

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- (e) forms for the purposes of this Schedule or the regulations.
 - (2) If the Minister is satisfied that —
 - (a) a power, function or duty is conferred or imposed on a person under a law of this State or the Commonwealth; and
 - (b) the proper exercise of the power or performance of the function or duty is or would be prevented by this Schedule or a provision of this Schedule,
10 regulations made for the purposes of this subclause may declare that this Schedule, or the provision, as the case may be, does not apply to that person, or does not apply to that person in the circumstances specified in the regulations.
 - 15 (3) Regulations made for the purposes of subclause (2) do not remain in force for longer than 5 years after they commence, but this subclause does not prevent the making of further regulations of the same substance.
 - 20 (4) In subclause (2) —
“**this Schedule**” includes regulations made for the purposes of this Schedule.
- ”.

Part 3 — *Petroleum Pipelines Act 1969*

18. The Act amended

The amendments in this Part are to the *Petroleum Pipelines Act 1969**.

5 [* Reprinted as at 12 May 2000.
For subsequent amendments see *Western Australian
Legislation Information Tables for 2004, Table 1, p. 336.*]

19. Section 4 amended

10 Section 4(1) is amended by inserting in the appropriate
alphabetical positions the following definitions —

“

“**listed OSH law**” means —

- 15 (a) section 65;
- (b) Schedule 1;
- (c) a regulation made for the purposes of
Schedule 1;
- (d) a regulation made for the purposes of
section 56B; or
- 20 (e) any other written law relating to
occupational safety and health matters that is
prescribed for the purposes of this paragraph;

“**other protected person**” means a person who is at or
near a place where a pipeline operation is being
carried on at the invitation of, or with the express
25 or implied consent of —

- (a) the licensee for the pipeline operation; or
- (b) a person in control of a part of the pipeline
operation;

s. 20

“pipeline operation” means an operation —

- 5
- (a) in connection with the construction, operation, inspection (by a person other than an inspector), maintenance or repair of a pipeline; and
 - (b) carried out on land that is specified in any licence as licence area;

”.

20. Section 5AA inserted

10 After section 5 the following section is inserted in Part 1 —

“

5AA. Disapplication of State occupational safety and health laws

- 15
- (1) The prescribed occupational safety and health laws do not apply in relation to —
 - (a) a pipeline operation; or
 - (b) a person engaged in a pipeline operation or any other protected person.

- (2) In this section —

20 **“prescribed occupational safety and health laws”** means any laws of the State relating to occupational safety and health (whether or not they also relate to other matters) that are prescribed by the regulations for the purposes of

25 this section.

”.

21. Section 36A amended

30 Section 36A is amended by deleting “and shall secure the safety, health and welfare of persons engaged in operations in connection with the pipeline”.

22. **Section 55 repealed**

Section 55 is repealed.

23. **Part IVA inserted**

After section 56 the following Part is inserted —

5 “

Part IVA — Occupational safety and health

56A. Occupational safety and health

Schedule 1 has effect.

10 **56B. Regulations relating to occupational safety and health**

(1) The regulations may make provision in relation to —

- (a) the occupational safety and health of a person engaged in a pipeline operation; or
- (b) the safety and health of any other protected person.

15

(2) Without limiting subsection (1), regulations for the purpose of that subsection may —

- (a) require a person who is carrying on a pipeline operation to establish and maintain a system of management to secure —
 - (i) the occupational safety and health of a person engaged in a pipeline operation; or
 - (ii) the safety and health of any other protected person;

20

and

- (b) specify requirements with which the system must comply.

25

56C. Minister's occupational safety and health functions

- (1) The Minister has the following functions —
- (a) to promote the occupational safety and health of persons engaged in pipeline operations;
 - (b) to develop and implement effective monitoring and enforcement strategies to secure compliance by persons with their occupational safety and health obligations under this Act;
 - (c) to investigate accidents, occurrences and circumstances that affect, or have the potential to affect, the occupational safety and health of persons engaged in pipeline operations;
 - (d) to advise persons, either on the Minister's own initiative or on request, on occupational safety and health matters relating to pipeline operations.
- (2) The Minister has power to do all things necessary or convenient to be done for or in connection with the performance of the Minister's functions.

5
10
15
20

”.

24. Section 61 amended

- (1) Section 61(1)(a) is amended by deleting “Department of Mines at Perth in the State” and inserting instead —
- “
- department of the Public Service principally assisting in the administration of this Act
- ”.
- (2) Section 61(4) is repealed.

25

”.

25. Section 62 amended

(1) Section 62(1) is amended by deleting “the purposes of this Act and the regulations.” and inserting instead —

“

5 such or all of the purposes of this Act as are specified
 in the instrument of appointment.

”.

(2) Section 62(2) is amended by deleting “he is an inspector for the purposes of this Act and the regulations.” and inserting
10 instead —

“

 the person is an inspector for the purposes specified in
 the certificate.

”.

15 **26. Section 63 amended**

Section 63(1) is amended by deleting “and the regulations,” and inserting instead —

“

20 , but without affecting the powers of an inspector under
 Schedule 1,

”.

27. Section 63A inserted

After section 63 the following section is inserted —

“

25 **63A. Protection from liability for wrongdoing**

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

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(2) The protection given by subsection (1) applies even though the thing done as described in that subsection may have been capable of being done whether or not this Act had been enacted.

5 (3) Despite subsection (1), the State is not relieved of any liability that it might have for another person having done anything as described in that subsection.

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

10

”.

28. Section 65 replaced

Section 65 is repealed and the following section is inserted instead —

“

15 **65. Interfering with pipeline operation**

A person must not intentionally or recklessly —

- (a) cause damage to, or interfere with, any pipeline; or
- (b) interfere with any pipeline operation.

20

Penalty: imprisonment for 10 years.

”.

29. Sections 66BA and 66BB inserted and transitional provision

(1) After section 66B the following sections are inserted —

“

25 **66BA. Time for bringing proceedings for offences against this Act (including the regulations)**

A proceeding for an offence against this Act may be brought at any time.

66BB. Evidentiary matters

- (1) In a proceeding for an offence against this Act an averment in the complaint that at a particular time —
- (a) a particular operation was a pipeline operation;
 - 5 (b) a particular person was the licensee for a pipeline operation;
 - (c) a particular person was in control of a particular part of a pipeline operation;
 - 10 (d) a particular person was an employer who carried on a pipeline operation;
 - (e) a particular person was an employer of a particular person or particular persons engaged in a pipeline operation;
 - 15 (f) a particular person was an employee or inspector,

is to be taken to have been proved in the absence of evidence to the contrary.

- (2) In a proceeding for an offence against this Act, proof is not required as to any of the following matters, unless
- 20 evidence is given to the contrary —
- (a) a delegation under section 61 by the Minister of a power or function;
 - (b) the authority of any person to institute a proceeding for an offence against this Act other
 - 25 than an offence against a listed OSH law;
 - (c) the authority of an inspector to institute a proceeding for an offence against a listed OSH law.
- (3) In a proceeding for an offence against this Act, production of a copy of —
- 30
- (a) a code of practice;
 - (b) an Australian Standard; or

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(c) an Australian/New Zealand Standard,
purporting to be certified by the CEO to be a true copy
as at any date or during any period is, without proof of
the signature of the CEO, sufficient evidence of the
5 contents of the code of practice or Standard as at that
date or during that period.

(4) In subsection (3) —
“**Australian Standard**” means a document having that
title published by Standards Australia;
10 “**Australian/New Zealand Standard**” means a
document having that title jointly published by
Standards Australia and the Standards Council of
New Zealand;
“**CEO**” means the chief executive officer of the
15 department of the Public Service principally
assisting in the administration of this Act.

”.

(2) Section 51 of the *Justices Act 1902* as in force immediately
before the commencement of subsection (1) applies to an
20 offence against the *Petroleum Pipelines Act 1969* committed
before that commencement as if subsection (1) had not been
enacted.

30. Section 67 amended

(1) After section 67(1)(f) the following paragraphs are inserted —
25 “
(fa) fees in relation to pipeline safety audits or other
services provided by the Minister;
(fb) any transitional matter arising out of the
30 amendments made to this Act by the *Petroleum
Legislation Amendment and Repeal Act 2005*;
”.

(2) After section 67(1b) the following subsection is inserted —

“

(1c) The regulations under this section may adopt or apply, with or without modification, any regulation made under the *Petroleum Act 1967*, the *Petroleum (Submerged Lands) Act 1982* or the Commonwealth Act as defined in that Act, that is in force or existing at the time when the regulations under this section take effect or as in force or existing from time to time.

”.

31. Various sections amended to delete “or the regulations” (*Interpretation Act 1984 s. 46*)

The provisions set out in the Table to this section are amended by deleting “or the regulations” in each case.

Table

s. 6(3)(b)	s. 61
s. 22(1)(f)	s. 66(1) and (2)
s. 42(1)	s. 66A

32. Schedule 1 inserted

After section 67 the following Schedule is inserted —

“

Schedule 1 — Occupational safety and health

[s. 56A]

Division 1 — Introduction

1. Objects

The objects of this Schedule are, in relation to pipeline operations —

- (a) to secure the occupational safety and health of persons engaged in those operations;

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- 5
- (b) to protect persons in the vicinity of those operations at the invitation of, or with the express or implied consent of, the licensees for, or persons in control of a part of, those operations from risks to safety and health arising out of those operations;
- (c) to ensure that expert advice is available on occupational safety and health matters in relation to those operations;
- 10 (d) to promote an occupational environment for members of the workforce engaged in those operations that is adapted to their needs relating to safety and health; and
- 15 (e) to foster a consultative relationship between all relevant persons concerning the safety and health of members of the workforce engaged in those operations.

2. Simplified outline

The following is a simplified outline of this Schedule —

- 20
- This Schedule sets up a scheme to regulate occupational safety and health matters relating to pipeline operations.
 - Occupational safety and health duties are imposed on the following —
 - 25 (a) the licensee for a pipeline operation;
 - (b) a person in control of any part of a pipeline operation;
 - (c) an employer;
 - (d) a manufacturer of plant, or a substance, for use in a pipeline operation;
 - 30 (e) a supplier of a pipeline, or of any plant or substance, for use in a pipeline operation;
 - (f) a person who constructs or installs a pipeline, or any plant, for use in a pipeline operation;
 - (g) a person engaged in a pipeline operation.

- A group of members of the workforce engaged in a pipeline operation may be established as a designated work group.
- 5 • The members of a designated work group may select a safety and health representative for that designated work group.
- The safety and health representative may exercise certain powers for the purpose of promoting or ensuring the occupational safety and health of group members.
- 10 • An inspector may conduct an inspection —
 - (a) to ascertain whether a listed OSH law is being complied with;
 - (b) concerning a contravention or a possible contravention of a listed OSH law; or
 - 15 (c) concerning an accident or dangerous occurrence that has happened at or near a place at which a pipeline operation is carried on.
- The licensee for a pipeline operation must report to the Minister accidents and dangerous occurrences arising out of the pipeline operation.
- 20

3. Definitions

In this Schedule —

“**accident**” includes the contraction of a disease;

“**contract**” includes an arrangement or understanding;

25 “**contractor**” has the meaning given by clause 6;

“**dangerous occurrence**” means an occurrence declared by the regulations to be a dangerous occurrence for the purposes of this definition;

“**designated work group**” means —

- 30 (a) a group of members of the workforce engaged in a pipeline operation that is established as a designated work group under clause 17 or 18; or

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(b) that group as varied in accordance with clause 19 or 20;

“employee”, in relation to an employer, means an employee of that employer;

5 **“employer”** means an employer who carries on a pipeline operation;

“group member”, in relation to a designated work group for a pipeline operation, means a person who is —

10 (a) a member of the workforce engaged in that operation; and

(b) included in that designated work group;

“improvement notice” means an improvement notice issued under clause 60(1);

15 **“inspection”** means an inspection conducted under Division 4 and includes an investigation or inquiry;

“licensee”, in relation to a pipeline operation, means the registered holder of the licence granted in respect of that operation;

20 **“licensee’s representative”** means a person present at a workplace in compliance with the obligations imposed on the licensee by clause 4;

“member of the workforce”, in relation to a pipeline operation, means a natural person who is engaged in the operation, whether —

25 (a) as an employee of the licensee or of another person; or

(b) as a contractor of the licensee or of another person;

“own” includes own jointly and own in part;

30 **“plant”** includes any machinery, equipment or tool, or any component;

“premises” includes the following —

(a) a structure or building;

(b) a place (whether or not enclosed or built on);

- (c) a part of a thing referred to in paragraph (a) or (b);

“prohibition notice” means a prohibition notice issued under clause 58(1);

5

“registered organisation” means an organisation —

- (a) within the meaning of the *Workplace Relations Act 1996* of the Commonwealth; or
(b) as defined in section 7(1) of the *Industrial Relations Act 1979*;

10

“regulated business premises” means —

- (a) a place where a pipeline operation is carried on; or
(b) premises that are —
(i) occupied by a person who is the licensee for a pipeline operation; and
(ii) used, or proposed to be used, wholly or principally in connection with a pipeline operation;

15

“regulations” means regulations made for the purposes of this Schedule;

20

“Tribunal” has the meaning given to that term in the *Occupational Safety and Health Act 1984* section 51G(2);

25

“work” means work that is directly or indirectly related to a pipeline operation;

“workforce representative” means —

- (a) in relation to a person who is a member of the workforce engaged in a pipeline operation — a registered organisation of which that person is a member, if the person is qualified to be a member of that organisation because of the work the person performs in relation to the pipeline operation; or
(b) in relation to a designated work group or a proposed designated work group — a registered organisation of which a person who is, or who is

30

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5 likely to be, in the work group is a member, if the person is qualified to be a member of that organisation because of the work the person performs, or will perform, in relation to the pipeline operation as a member of the group;

“work group employer”, in relation to a designated work group in relation to a pipeline operation, means an employer of one or more group members, but does not include the licensee for the pipeline operation;

10 **“workplace”**, in relation to a pipeline operation, means the whole place where the pipeline operation is carried on or any part of a place where the pipeline operation is carried on.

15 **4. Licensee must ensure presence of licensee’s representative**

 (1) The licensee for a pipeline operation must ensure that, at all times when one or more natural persons are engaged in the pipeline operation, there is present at the workplace a natural person (the **“licensee’s representative”**) who has day to day management and control of the pipeline operation.

 Penalty: \$5 500.

25 (2) The licensee for a pipeline operation must ensure that the name of the licensee’s representative is displayed in a prominent place at the workplace.

 Penalty: \$5 500.

 (3) Subclause (1) does not imply that, if the licensee is a natural person, the licensee’s representative may not be, from time to time, the licensee.

30 **5. Safety and health of persons using an accommodation amenity**

 For the avoidance of doubt, a reference in this Schedule to the occupational safety and health of a person includes a reference to the safety and health of a person using an

accommodation amenity provided for the accommodation of persons engaged in a pipeline operation.

6. Contractor

For the purposes of this Schedule, a natural person is taken to be a “contractor” of another person (the “**relevant person**”) if the natural person is engaged in a pipeline operation under a contract for services between —

- (a) the relevant person; and
- (b) either —
 - (i) the natural person; or
 - (ii) the employer of the natural person.

Division 2 — Occupational safety and health

Subdivision 1 — Duties relating to occupational safety and health

7. Duties of licensee

- (1) The licensee for a pipeline operation must take all reasonably practicable steps to ensure that the pipeline operation is carried out in a manner that is safe and without risk to the health of persons engaged in the pipeline operation or other protected persons.

Penalty: \$110 000.

- (2) Without limiting the generality of subclause (1), the licensee for a pipeline operation must —
- (a) provide and maintain a physical environment at the place where the pipeline operation is carried out that is safe and without risk to health;
 - (b) provide and maintain adequate amenities for the safety and health of all members of the workforce engaged in the pipeline operation;
 - (c) ensure that any plant, equipment, materials and substances for use in the pipeline operation are safe and without risk to health;

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- (d) implement and maintain systems of work in relation to the pipeline operation that are safe and without risk to health;
- 5 (e) implement and maintain appropriate procedures and equipment for the control of, and response to, emergencies arising out of the pipeline operation;
- 10 (f) provide all members of the workforce, in appropriate languages, with the information, instruction, training and supervision necessary for them to carry out their activities in a manner that does not adversely affect the occupational safety and health of persons engaged in the pipeline operation;
- 15 (g) monitor the occupational safety and health of all members of the workforce and keep records of that monitoring;
- (h) provide appropriate medical and first aid services at the places at which a pipeline operation is carried on; and
- 20 (i) develop, in consultation with members of the workforce and workforce representatives, a policy relating to occupational safety and health that —
 - 25 (i) will enable the licensee and the members of the workforce to cooperate effectively in promoting and developing measures to ensure the occupational safety and health of persons engaged in the pipeline operation;
 - (ii) will provide adequate mechanisms for reviewing the effectiveness of the measures; and
 - 30 (iii) provides for the making of an agreement that complies with subclauses (4) and (5).

Penalty: \$110 000.

- 35 (3) Subclause (2)(i) does not require the licensee for a pipeline operation to engage in consultations with a workforce representative unless a member of the workforce engaged in

the pipeline operation has requested the workforce representative to be involved in those consultations.

(4) The agreement referred to in subclause (2)(i)(iii) must be between —

5

(a) on the one hand — the licensee; and

(b) on the other hand —

(i) the members of the workforce; and

10

(ii) if a member of the workforce engaged in the pipeline operation has requested a workforce representative in relation to the member to be a party to that agreement — that workforce representative.

(5) The agreement referred to in subclause (2)(i)(iii) must provide appropriate mechanisms for continuing consultation between —

15

(a) on the one hand — the licensee; and

(b) on the other hand —

(i) the members of the workforce; and

20

(ii) if a member of the workforce engaged in the pipeline operation has requested a workforce representative in relation to the member to be involved in consultations on a particular occasion — that workforce representative.

25

(6) The agreement may provide for any other matters agreed between the parties to it.

8. Duties of persons in control of parts of pipeline operation

30

(1) A person who is in control of any part of a pipeline operation must take all reasonably practicable steps to ensure that that part of the pipeline operation is carried out in a manner that is safe and without risk to the health of persons engaged in the pipeline operation or other protected persons.

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Penalty: \$110 000.

s. 32

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- 20
- (2) Without limiting the generality of subclause (1), a person who is in control of any part of a pipeline operation must —
- (a) ensure that the physical environment at the place where that part of the pipeline operation is carried out is safe and without risk to health;
 - (b) ensure that any plant, equipment, materials and substances for use in that part of the pipeline operation are safe and without risk to health;
 - (c) implement and maintain systems of work in relation to that part of the pipeline operation that are safe and without risk to health;
 - (d) ensure a means of access to, and egress from the place where that part of the pipeline operation is carried out is safe and without risk to health; and
 - (e) provide all members of the workforce engaged in that part of the pipeline operation in appropriate languages, with the information, instruction, training and supervision necessary for them to carry out their work in a manner that is safe and without risk to health.

Penalty: \$110 000.

9. Duties of employers

- 25
- (1) An employer must take all reasonably practicable steps to protect the safety and health of employees engaged in a pipeline operation.
- Penalty: \$110 000.
- (2) Without limiting the generality of subclause (1), an employer must —
- 30 (a) provide and maintain a working environment that is safe for employees and without risk to their health;
 - (b) ensure that any plant, equipment, materials and substances for use in connection with the employees' work are safe and without risk to health;
 - 35 (c) implement and maintain systems of work that are safe and without risk to health;

(d) provide a means of access to, and egress from, the employees' work location that is safe and without risk to health; and

5

(e) provide the employees, in appropriate languages, with the information, instruction, training and supervision necessary for them to carry out their work in a manner that is safe and without risk to health.

Penalty: \$110 000.

10

(3) A person has, in respect of a contractor of that person, the same obligations that an employer has under subclauses (1) and (2) in respect of an employee of that employer, but only in relation to —

15

(a) matters over which the first-mentioned person has control; or

(b) matters over which —

20

(i) the first-mentioned person would have had control apart from express provision to the contrary in a contract; and

(ii) the first-mentioned person would, in the circumstances, usually be expected to have had control.

(4) An employer must take all reasonable steps to —

25

(a) monitor the safety and health of employees; and

(b) keep records of that monitoring.

Penalty: \$110 000.

(5) An employer must take all reasonably practicable steps to ensure that —

30

(a) work that is undertaken by the employer's employees is carried out in a manner that is safe and without risk to the health of persons engaged in the pipeline operation or other protected persons; and

(b) the employer's system of work is operated in a manner that is safe and without risk to the health of

persons engaged in the pipeline operation or other protected persons.

Penalty: \$22 000.

10. Duties of manufacturers in relation to plant and substances

5

(1) A manufacturer of any plant that the manufacturer knows or ought reasonably to expect will be used by members of the workforce engaged in a pipeline operation must take all reasonably practicable steps —

10

(a) to ensure that the plant is so designed and constructed as to be, when properly used, safe and without risk to health;

15

(b) to carry out, or cause to be carried out, the research, testing and examination necessary in order to discover, and to eliminate or minimise, any risk to safety or health that may arise from the use of the plant; and

20

(c) to make available, in connection with the use of the plant in a pipeline operation, adequate written information about —

25

(i) the use for which it is designed and has been tested;

(ii) details of its design and construction; and

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

Penalty: \$22 000.

30

(2) A manufacturer of any substance that the manufacturer knows or ought reasonably to expect will be used by members of the workforce engaged in a pipeline operation must take all reasonably practicable steps —

35

(a) to ensure that the substance is so manufactured as to be, when properly used, safe and without risk to health;

- 5 (b) to carry out, or cause to be carried out, the research, testing and examination necessary to discover, and to eliminate or minimise, any risk to safety or health that may arise from the use of the substance; and
- (c) to make available, in connection with the use of the substance in a pipeline operation, adequate written information concerning —
- 10 (i) the use for which it is manufactured and has been tested;
- (ii) details of its composition;
- (iii) any conditions necessary to ensure that, when put to the use for which it was manufactured and tested, it will be safe and without risk to health; and
- 15 (iv) the first aid and medical procedures that should be followed if the substance causes injury.

Penalty: \$22 000.

- (3) If —
- 20 (a) plant or a substance is imported into Australia by a person who is not its manufacturer; and
- (b) at the time of the importation, the manufacturer of the plant or substance does not have a place of business in Australia,
- 25 the first-mentioned person is taken, for the purposes of this clause, to be the manufacturer of the plant or substance.
- (4) This clause does not affect the operation of any other law of this State that imposes an obligation on a manufacturer in respect of defective goods or in respect of information to be
- 30 supplied in relation to goods.

11. Duties of suppliers of pipelines, plant and substances

- (1) A supplier of a pipeline, or of any plant or substance, that the supplier ought reasonably to expect will be used by

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members of the workforce engaged in a pipeline operation,
must take all reasonably practicable steps —

- 5
- (a) to ensure that, at the time of supply, the pipeline, or the plant or substance, is in such condition as to be, when properly used, safe and without risk to health;
 - (b) to carry out, or cause to be carried out, the research, testing and examination necessary to discover, and to eliminate or minimise, any risk to safety or health that may arise from the condition of the pipeline, plant or substance; and
 - (c) to make available —
 - (i) in the case of a pipeline — to the licensee for the pipeline operation; and
 - (ii) in the case of plant or substance — to the person to whom the plant or substance is supplied,
- 10
- 15

adequate written information, in connection with the use of the pipeline, plant or substance (as the case requires) about —

- 20
- (iii) the condition of the pipeline, plant or substance at the time of supply;
 - (iv) any risk to the safety and health of members of the workforce engaged in a pipeline operation to which the condition of the pipeline, plant or substance may give rise unless it is properly used;
 - (v) the steps that need to be taken in order to eliminate that risk; and
 - (vi) in the case of a substance — the first aid and medical procedures that should be followed if the condition of the substance causes injury to a member of the workforce engaged in a pipeline operation.
- 25
- 30

Penalty: \$22 000.

- 35
- (2) For the purposes of subclause (1), if a person (the “**ostensible supplier**”) supplies to a person either a

pipeline, or any plant or substance, that is for use by members of the workforce engaged in a pipeline operation, and the ostensible supplier —

- 5
- (a) carries on the business of financing the acquisition or the use of goods by other persons;
- 10
- (b) has, in the course of that business, acquired an interest in the pipeline, or in the plant or substance, from another person (the “**actual supplier**”), solely for the purpose of financing its acquisition by, or its provision to, the person to whom it is finally supplied; and
- 15
- (c) has not taken possession of the pipeline, plant or substance, or has taken possession of the pipeline, plant or substance solely for the purpose of passing possession of the pipeline, plant or substance to the person to whom it is finally supplied,

20

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

- (3) This clause does not affect the operation of any other law of this State that imposes an obligation in respect of the sale or supply of goods or in respect of the information to be supplied in relation to goods.

25

12. Duties of persons constructing pipelines or installing plant

- 30
- (1) A person who constructs or installs a pipeline, or erects or installs any plant, for use in a pipeline operation, must take all reasonably practicable steps to ensure that the pipeline or plant is not erected or installed in such a way that it is unsafe or constitutes a risk to safety or health.

Penalty: \$22 000.

- (2) This clause does not affect the operation of any other law of this State that imposes an obligation in respect of the erection or installation of structures or goods or the supply of services.

5 **13. Duties of persons in relation to occupational safety and health**

- (1) A person engaged in a pipeline operation must, at all times, take all reasonably practicable steps —
- 10 (a) to ensure that the person does not take any action, or make any omission, that creates a risk, or increases an existing risk, to —
- (i) the occupational safety and health of that person; or
- (ii) the safety and health of any other protected person;
- 15 (b) in respect of any obligation imposed on the licensee or on any other person under a listed OSH law — to cooperate with the licensee or that other person to the extent necessary to enable the licensee or that other person to fulfil that obligation; and
- 20 (c) to use equipment that is —
- (i) supplied to the person by the licensee, an employer of the person or any other person having control of the pipeline operation (the “**equipment supplier**”); and
- 25 (ii) necessary to protect the occupational safety and health of the person, or the safety and health of any other person engaged in the pipeline operation or protected person,
- 30 in accordance with any instructions given by the equipment supplier, consistent with the safe and proper use of the equipment.

Penalty: \$5 500.

- 35 (2) Despite subclause (1), the choice or manner of use, or choice and manner of use, of equipment of the kind referred

to in subclause (1)(c)(ii) is a matter that may be, consistently with each listed OSH law —

- (a) agreed on between the equipment supplier and any relevant safety and health representative; or
 - 5 (b) agreed on by a safety and health committee.
- (3) If an agreement of the kind referred to in subclause (2)(a) or (b) provides a process for choosing equipment of a particular kind that is to be provided by the equipment supplier, action must not be taken against a person for failure to use equipment of that kind that is so provided unless the equipment has been chosen in accordance with that process.
- 10
- (4) If an agreement of the kind referred to in subclause (2)(a) or (b) provides a process for determining the manner of use of equipment of a particular kind, action must not be taken against a person for failure to use, in the manner required by the equipment supplier, equipment of that kind that is so provided unless the manner has been determined in accordance with that process.
- 15

20 **14. Reliance on information supplied or results of research**

- (1) For the purpose of the application of clause 7, 8 or 9 to the use of plant or a substance, a person on whom an obligation is imposed under any of those clauses is regarded as having taken reasonably practicable steps as required by the relevant clause, in relation to the use of the plant or substance, to the extent that —
- 25
- (a) the person ensured, so far as practicable, that its use was in accordance with the information supplied by the manufacturer or the supplier of the plant or substance relating to occupational safety and health in its use; and
 - 30 (b) it was reasonable for the person to rely on that information.
- (2) For the purpose of the application of clause 10 or 11 to carrying out research, testing and examining a pipeline, or any plant or substance, a person on whom an obligation is
- 35

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- 5 imposed under either of those clauses is regarded as having taken reasonably practicable steps as required by the relevant clause, in relation to carrying out research, testing and examining the pipeline, plant or substance, to the extent that —
- (a) the research, testing or examination has already been carried out by or on behalf of someone else; and
- 10 (b) it was reasonable for the person to rely on that research, testing or examination.
- (3) For the purpose of the application of clause 12 to the construction of a pipeline or the erection or installation of plant for use in a pipeline operation, a person on whom an obligation is imposed under that clause is regarded as
- 15 having taken reasonably practicable steps as required by that clause to the extent that —
- (a) the person ensured, so far as is reasonably practicable, that the construction of the pipeline, or the erection or installation of the plant, was —
- 20 (i) in accordance with information supplied by the manufacturer or supplier of the pipeline or plant relating to its erection or its installation; and
- 25 (ii) consistent with the occupational safety and health of persons engaged in the pipeline operation;
- and
- (b) it was reasonable for the person to rely on that information.
- 30 (4) Nothing in this clause limits the generality of what constitutes reasonably practicable steps as required by clause 7, 8, 9, 10, 11 or 12.

Subdivision 2 — Regulations relating to occupational safety and health

15. Regulations relating to occupational safety and health

- 5 (1) The regulations may make provision relating to any matter affecting, or likely to affect, the occupational safety and health of persons engaged in a pipeline operation.
- (2) Regulations made for the purposes of subclause (1) may make provision for any or all of the following —
- 10 (a) prohibiting or restricting the performance of all work or specified work in relation to a pipeline operation;
- (b) prohibiting or restricting the use of all plant or specified plant in a pipeline operation;
- 15 (c) prohibiting or restricting the carrying out of all processes or a specified process in a pipeline operation;
- (d) prohibiting or restricting the storage or use of all substances or specified substances in a pipeline operation;
- 20 (e) specifying the form in which information required to be made available under clause 10(1)(c) or 11(1)(c) is to be so made available;
- (f) prohibiting, except in accordance with licences granted under the regulations, the use of specified plant or specified substances in a pipeline operation;
- 25 (g) providing for —
- (i) the issue, variation, renewal, transfer, suspension and cancellation of those licences; and
- 30 (ii) the conditions to which the licences may be subject;
- (h) regulating the maintenance and testing of plant for use in a pipeline operation;
- 35 (i) regulating the labelling or marking of substances for use in a pipeline operation;

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- (j) regulating the transport of specified plant or specified substances for use in a pipeline operation;
- (k) prohibiting the performance, in relation to a pipeline operation, of specified activities or work except —
 - 5 (i) by persons who satisfy requirements of the regulations as to qualifications, training or experience; or
 - (ii) under the supervision specified in the regulations;
- 10 (l) requiring specified action to avoid accidents or dangerous occurrences;
- (m) providing for, or prohibiting, specified action in the event of accidents or dangerous occurrences;
- 15 (n) providing for the employment of persons to perform specified duties relating to the maintenance of occupational safety and health in relation to a pipeline operation;
- 20 (o) regulating the provision and use, in a pipeline operation, of protective clothing and equipment, safety equipment and rescue equipment;
- (p) providing for monitoring the health of members of the workforce engaged in a pipeline operation and the conditions at a place at which a pipeline operation is carried out;
- 25 (q) requiring employers to keep records of matters related to the occupational safety and health of employees;
- 30 (r) providing for the provision of first aid equipment and amenities at a place at which a pipeline operation is carried out.

Division 3 — Workplace arrangements

Subdivision 1 — Introduction

16. Simplified outline

The following is a simplified outline of this Subdivision —

- 5
- A group of members of the workforce engaged in a pipeline operation may be established as a designated work group.
 - The members of a designated work group may select a safety and health representative for that designated work group.
 - The safety and health representative may exercise certain powers for the purpose of promoting or ensuring the occupational safety and health of group members.
 - A safety and health committee may be established in relation to the members of the workforce engaged in a pipeline operation.
 - The main function of a safety and health committee is to assist the licensee in relation to occupational safety and health matters.
- 10
- 15

Subdivision 2 — Designated work groups

17. Establishment of designated work groups by request

- (1) A request to the licensee for a pipeline operation to enter into consultations to establish designated work groups in relation to the members of the workforce engaged in the pipeline operation may be made by —
- (a) any member of the workforce; or
 - (b) if a member of the workforce requests a workforce representative in relation to the member to make the request to the licensee — that workforce representative.
- 20
- 25
- 30

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(2) The licensee for a pipeline operation must, within 14 days after receiving a request under subclause (1), enter into consultations with —

5

(a) if any member of the workforce made a request to establish designated work groups —

(i) that member of the workforce;

10

(ii) if that member requests that the licensee enter into consultations with a workforce representative in relation to the member — that workforce representative; and

(iii) each employer (if any) of members of the workforce;

and

15

(b) if a workforce representative made a request to establish designated work groups —

(i) if a member of the workforce requests that the licensee enter into consultations with that workforce representative — that workforce representative; and

20

(ii) each employer of members of the workforce.

25

(3) Within 14 days after the completion of consultations about the establishment of the designated work groups, the licensee must, by notifying the members of the workforce, establish the designated work groups in accordance with the outcome of the consultations.

18. Establishment of designated work groups at initiative of licensee

30

(1) If, at any time, the licensee for a pipeline operation considers that designated work groups should be established, the licensee must enter into consultations with —

(a) all members of the workforce;

35

(b) if a member of the workforce requests that the licensee enter into consultations with a workforce

representative in relation to the member — that
workforce representative; and

(c) each employer (if any) of members of the
workforce.

5 (2) Within 14 days after the completion of consultations about
the establishment of the designated work groups, the
licensee must, by notifying the members of the workforce,
establish the designated work groups in accordance with the
outcome of the consultations.

10 **19. Variation of designated work groups by request**

(1) A request to the licensee for a pipeline operation to enter
into consultations to vary designated work groups that have
already been established in relation to the members of the
workforce engaged in the pipeline operation may be made
by —

- 15 (a) any member of the workforce; or
 (b) if a member of the workforce requests a workforce
representative in relation to the member to make the
request to the licensee — that workforce
20 representative.

(2) The licensee for a pipeline operation must, within 14 days
after receiving a request under subclause (1), enter into
consultations with —

- 25 (a) if any member of the workforce made a request to
vary designated work groups —
 (i) that member of the workforce;
 (ii) the safety and health representative of each
designated work group affected by the
proposed variation; and
30 (iii) each work group employer (if any) in
relation to each designated work group
affected by the proposed variation;

and

- 5
- (b) if a workforce representative made a request to vary designated work groups —
- (i) if a member of a designated work group affected by the proposed variation requests that the licensee enter into consultations with that workforce representative in relation to the group — that workforce representative;
- 10 (ii) the safety and health representative of each designated work group affected by the proposed variation; and
- (iii) each work group employer (if any) in relation to each designated work group affected by the proposed variation.
- 15 (3) If —
- (a) consultations take place about the variation of designated work groups that have already been established; and
- 20 (b) as a result of the consultations, it has been determined that the variation of some or all of those designated work groups is justified,
- then, within 14 days after the completion of the consultations, the licensee must, by notifying the members of the workforce who are affected by the variation, vary the designated work groups in accordance with the outcome of the consultations.
- 25

20. Variation of designated work groups at initiative of licensee

- 30 (1) If the licensee for a pipeline operation believes the designated work groups should be varied, the licensee may, at any time, enter into consultations about the variations with —
- (a) the safety and health representative of each of the designated work groups affected by the proposed variation;
- 35

- 5
- (b) if a member of a designated work group affected by the proposed variation requests that the licensee enter into consultations with that workforce representative in relation to the group — that workforce representative; and
 - (c) each work group employer (if any) in relation to each designated work group affected by the proposed variation.

- 10
- (2) If —
- (a) consultations take place about the variation of designated work groups that have already been established; and
 - (b) as a result of the consultations, it has been determined that the variation of some or all of those
- 15

then, within 14 days after the completion of the consultations, the licensee must, by notifying the members of the workforce who are affected by the variation, vary the designated work groups in accordance with the outcome of the consultations.

20

21. Referral of disagreement to reviewing authority

- 25
- (1) If, in the course of consultations under clause 17, 18, 19 or 20, there is a disagreement between any of the parties to the consultation about the manner of establishing or varying a designated work group, any party may, for the purpose of facilitating that consultation, refer the matter of disagreement to the reviewing authority.
 - (2) The party referring the matter to the reviewing authority must give notice of the referral to all the other parties to the disagreement.
 - (3) The reviewing authority is to —
- (a) resolve the matter of the disagreement referred to the reviewing authority; and
 - (b) notify all parties to the disagreement of the decision.
- 35

(4) If the matter of a disagreement is referred to the reviewing authority, the parties to the disagreement must complete the consultation in accordance with the resolution of that matter by the reviewing authority.

5 (5) In this clause —
“**reviewing authority**” means a person prescribed by the regulations to be a reviewing authority for the purposes of this clause.

22. Manner of grouping members of the workforce

10 (1) Consultations about the establishment or variation of a designated work group must be directed principally at the determination of the manner of grouping members of the workforce —

15 (a) that best and most conveniently enables their interests relating to occupational safety and health to be represented and safeguarded; and

(b) that best takes account of the need for any safety and health representative selected for that designated work group to be accessible to each group member.

20 (2) The parties to the consultations must have regard, in particular, to —

25 (a) the number of members of the workforce engaged in the pipeline operation to which the consultation relates;

(b) the nature of each type of work performed by those members;

(c) the number and grouping of those members who perform the same or similar types of work;

30 (d) the workplaces where each type of work is performed;

(e) the nature of any risks to safety and health at each of those workplaces; and

35 (f) any overtime or shift working arrangement in relation to the pipeline operation.

(3) The designated work groups must be established or varied in such a way that, so far as practicable, each of the members of the workforce engaged in a pipeline operation is in a designated work group.

5 (4) All the members of the workforce engaged in a pipeline operation may be in one designated work group.

Subdivision 3 — Safety and health representatives

23. Selection of safety and health representatives

10 (1) One safety and health representative may be selected for each designated work group.

(2) A person is not eligible for selection as the safety and health representative for a designated work group unless the person is a member of the workforce included in the group.

15 (3) A person is taken to have been selected as the safety and health representative for a designated work group if —

(a) all the members of the workforce in the group unanimously agree to the selection; or

20 (b) the person is elected as the safety and health representative of the group in accordance with clause 24.

24. Election of safety and health representatives

(1) If —

(a) there is a vacancy in the office of safety and health representative for a designated work group; and

25 (b) within a reasonable time after the vacancy occurs, a person has not been selected under clause 23(3)(a),

the licensee for the pipeline operation must invite nominations from all group members for election as the safety and health representative of the group.

30 (2) If the office of safety and health representative is vacant and the licensee has not invited nominations within a further reasonable time that is no later than 6 months after the

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vacancy occurred, the Minister may direct the licensee to do so.

- 5
- (3) If there is more than one candidate for election at the close of the nomination period, the licensee must conduct, or arrange for the conduct of, an election at the licensee's expense.
- 10
- (4) An election conducted or arranged to be conducted under subclause (3) must be conducted in accordance with regulations made for the purposes of this subclause if this is requested by the lesser of —
- (a) 100 members of the workforce normally in the designated work group; or
- (b) a majority of the members of the workforce normally in the designated work group.
- 15
- (5) If there is only one candidate for election at the close of the nomination period, that person is taken to have been elected.
- (6) A person cannot be a candidate in the election if he or she is disqualified under clause 30.
- 20
- (7) All the members of the workforce in the designated work group are entitled to vote in the election.
- (8) A licensee conducting or arranging for the conduct of an election under this clause must comply with any relevant directions issued by the Minister.

25. List of safety and health representatives

25 The licensee for a pipeline operation must —

- (a) prepare and keep up to date a list of all the safety and health representatives of designated work groups comprising members of the workforce engaged in the pipeline operation; and
- 30 (b) ensure that the list is available for inspection, at all reasonable times, by —
- (i) the members of the workforce engaged in the pipeline operation; and
- (ii) inspectors.

26. Members of designated work group must be notified of selection etc. of safety and health representative

The licensee for a pipeline operation must —

- 5
- (a) notify members of a designated work group in relation to the pipeline operation of a vacancy in the office of safety and health representative for the designated work group within a reasonable time after the vacancy arises; and
- 10
- (b) notify those members of the name of any person selected (whether under clause 23(3)(a) or (b)) as safety and health representative for the designated work group within a reasonable time after the selection is made.

27. Term of office

- 15
- (1) A safety and health representative for a designated work group holds office —
- 20
- (a) if, in consultations that took place under clause 17, 18, 19 or 20, the parties to the consultations agreed to the period for which the safety and health representative for the group was to hold office — for that period; or
- (b) if paragraph (a) does not apply — for 2 years.
- (2) The term of office of a safety and health representative begins at the start of the day on which he or she was
- 25
- selected.
- (3) Nothing in this clause prevents a safety and health representative from being selected for further terms of office.

28. Training of safety and health representatives

- 30
- (1) A safety and health representative for a designated work group must undertake a course of training relating to occupational safety and health that is accredited by the Minister for the purposes of this clause.

(2) The licensee for the pipeline operation concerned must permit the representative to take any time off work, without loss of remuneration or other entitlements, that is necessary to undertake the training.

5 (3) If a person other than the licensee is the employer of the representative, that person must permit the representative to take any time off work, without loss of remuneration or other entitlements, that is necessary to undertake the training.

10 **29. Resignation etc. of safety and health representatives**

(1) A person ceases to be the safety and health representative for the designated work group if —

- 15 (a) the person resigns as the safety and health representative;
- (b) the person ceases to be a group member of that designated work group;
- 20 (c) the person's term of office expires without the person having been selected, under clause 23, to be the safety and health representative for the designated work group for a further term; or
- (d) the person is disqualified under clause 30.

(2) A person may resign as the safety and health representative for a designated work group by notice in writing delivered to the licensee and to each work group employer.

25 (3) If a person resigns as the safety and health representative for a designated work group, the person must notify the resignation to the group members.

30 (4) If a person has ceased to be the safety and health representative for a designated work group because of subclause (1)(b), the person must notify in writing —

- (a) the group members; and
- (b) the licensee and each work group employer,

that the person has ceased to be the safety and health representative for that designated work group.

30. Disqualification of safety and health representatives

- (1) An application for the disqualification of a safety and health representative for a designated work group may be made to the Tribunal by —
- 5 (a) the licensee;
- (b) a work group employer; or
- (c) at the request of a group member of the designated work group — a workforce representative in relation to the designated work group.
- 10 (2) An application under subclause (1) may be made on either or both of the following grounds —
- (a) that action taken by the representative in the exercise or purported exercise of a power under clause 32(1) or any other provision of this Schedule was taken —
- 15 (i) with the intention of causing harm to the licensee or work group employer or to an undertaking of the licensee or work group employer; or
- 20 (ii) unreasonably, capriciously or not for the purpose for which the power was conferred on the representative;
- (b) that the representative has intentionally used, or disclosed to another person, for a purpose that is not connected with the exercise of a power of a safety and health representative, information acquired from the licensee or work group employer.
- 25
- 30 (3) On an application under subclause (1), the Tribunal may disqualify the representative, for a specified period not exceeding 5 years, from being a safety and health representative for any designated work group, if the Tribunal is satisfied that the representative has acted in a manner referred to in subclause (2).

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- (4) In making a decision under subclause (3), the Tribunal must have regard to —
- (a) the harm (if any) that was caused to the licensee or work group employer or to an undertaking of the licensee or work group employer as a result of the action of the representative;
 - (b) the past record of the representative in exercising the powers of a safety and health representative;
 - (c) the effect (if any) on the public interest of the action of the representative; and
 - (d) any other matters the Tribunal thinks relevant.

31. Deputy safety and health representatives

- (1) One deputy safety and health representative may be selected for each designated work group for which a safety and health representative has been selected.
- (2) A deputy safety and health representative is to be selected in the same way as a safety and health representative under clause 23.
- (3) If the safety and health representative for a designated work group —
 - (a) ceases to be the safety and health representative; or
 - (b) is unable (because of absence or for any other reason) to exercise the powers of a safety and health representative,then —
 - (c) the powers may be exercised by the deputy safety and health representative (if any) for the group; and
 - (d) this Schedule (other than this clause) applies in relation to the deputy safety and health representative accordingly.

32. Powers of safety and health representatives

(1) A safety and health representative for a designated work group may, for the purpose of promoting or ensuring the safety and health at a workplace of the group members —

5

(a) do all or any of the following —

10

(i) inspect the whole or any part of the workplace if there has, in the immediate past, been an accident or a dangerous occurrence at the workplace, or if there is an immediate threat of such an accident or dangerous occurrence;

15

(ii) inspect the whole or any part of the workplace if the safety and health representative has given reasonable notice of the inspection to the licensee's representative and to any other person having immediate control of the workplace;

20

(iii) make a request to an inspector or to the Minister that an inspection be conducted at the workplace;

25

(iv) accompany an inspector during any inspection at the workplace by the inspector (whether or not the inspection is being conducted as a result of a request made by the safety and health representative);

30

(v) if there is no safety and health committee in respect of the members of the workforce engaged in the pipeline operation — represent group members in consultations with the licensee and any work group employer about the development, implementation and review of measures to ensure the safety and health of those members at the workplace;

35

(vi) if a safety and health committee has been established in respect of the members of the workforce engaged in the pipeline

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operation — examine any of the records of that committee;

- 5
- (b) investigate complaints made by any group member to the safety and health representative about the safety and health of any of the members of the workforce (whether in the group or not);
- (c) with the consent of a group member, be present at any interview about safety and health at work between that member and —
- 10
- (i) an inspector;
- (ii) the licensee or a person representing the licensee; or
- (iii) a work group employer or a person representing that employer;
- 15
- (d) obtain access to any information under the control of the licensee or any work group employer —
- (i) relating to risks to the safety and health of any group member; and
- 20
- (ii) relating to the safety and health of any group member;
- and
- (e) issue provisional improvement notices in accordance with clause 36.

(2) Subclause (1)(d)(ii) has effect subject to clause 34.

25 **33. Assistance by consultant**

- (1) A safety and health representative for a designated work group is entitled, in the exercise of his or her powers, to be assisted by a consultant.
- (2) A safety and health representative for a designated work group may —
- 30
- (a) be assisted by a consultant at a workplace at which work is performed; or

- (b) provide to a consultant information that has been provided to the safety and health representative by a group member under clause 32(1)(d),

only if the licensee or the Minister has, in writing, agreed to the provision of that assistance at that workplace or the provision of that information, as the case may be.

- (3) Neither the licensee nor any workplace employer becomes, because of the agreement under subclause (2) to the provision of assistance by a consultant, liable for any remuneration or other expenses incurred in connection with the consultant's activities.

- (4) If a safety and health representative for a designated work group is being assisted by a consultant, the consultant is entitled to be present with the representative at any interview, about safety and health at work, between a group member and —

- (a) an inspector; or
- (b) the licensee or any work group employer or a person representing the licensee or that employer,

if, and only if, the group member consents to the presence of the consultant.

34. Information

- (1) Neither —
 - (a) a safety and health representative; nor
 - (b) a consultant assisting a safety and health representative,

is entitled, under clause 32(1)(d)(ii), to have access to information in respect of which a group member is entitled to claim, and does claim, legal professional privilege.

- (2) Neither —
 - (a) a safety and health representative; nor
 - (b) a consultant assisting a safety and health representative,

is entitled, under clause 32(1)(d)(ii), to have access to information of a confidential medical nature relating to a person who is or was a group member unless —

- 5
- (c) the person has delivered to the licensee or any work group employer a written authority permitting the safety and health representative, or the safety and health representative and the consultant, as the case requires, to have access to the information; or
 - 10 (d) the information is in a form that does not identify the person or enable the identity of the person to be discovered.

35. Obligations and liabilities of safety and health representatives

This Schedule does not —

- 15
- (a) impose an obligation on a person to exercise any power conferred on the person because the person is a safety and health representative; or
 - (b) render a person liable in civil proceedings because of —
 - 20 (i) a failure to exercise such a power; or
 - (ii) the way such a power was exercised.

36. Provisional improvement notices

(1) If —

- 25
- (a) a safety and health representative for a designated work group believes, on reasonable grounds, that a person —
 - (i) is contravening a listed OSH law; or
 - (ii) has contravened a provision of a listed OSH law and is likely to contravene that provision again;
 - 30 and
 - (b) the contravention affects or may affect one or more group members,

the representative must consult with the person supervising the relevant activity in an attempt to reach agreement on rectifying the contravention or preventing the likely contravention.

- 5 (2) If, in the safety and health representative's opinion, agreement is not reached within a reasonable time, the safety and health representative may issue a provisional improvement notice to any or each person (a "**responsible person**") responsible for the contravention.
- 10 (3) If a responsible person is the licensee, the improvement notice may be issued to the licensee by giving it to the licensee's representative.
- (4) If it is not practicable to issue the notice to a responsible person (other than the licensee or the supervisor) by giving it to that responsible person —
- 15 (a) the notice may be issued to that responsible person by giving it to the person who for the time being is, or may reasonably be presumed to be, on behalf of the responsible person, in charge of the activity to which the notice relates; and
- 20 (b) if the notice is so issued, a copy of the notice must be given to the responsible person as soon as practicable afterwards.
- (5) The notice must —
- 25 (a) specify the contravention that, in the safety and health representative's opinion, is occurring or is likely to occur, and set out the reasons for that opinion; and
- (b) specify a period that —
- 30 (i) is not less than 7 days beginning on the day after the notice is issued; and
- (ii) is, in the representative's opinion, reasonable,
- 35 within which the responsible person is to take action necessary to prevent any further contravention or to prevent the likely contravention, as the case may be.

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- (6) The notice may specify action that the responsible person is to take during the period specified in the notice.
- 5 (7) If, in the safety and health representative's opinion, it is appropriate to do so, the representative may, in writing and before the end of the period, extend the period specified in the notice.
- (8) On issuing the notice, the safety and health representative must give a copy of the notice to —
- 10 (a) if the licensee is not a responsible person — the licensee;
- (b) each work group employer other than a work group employer who is a responsible person;
- (c) if the supervisor is not a responsible person — the supervisor; and
- 15 (d) if the notice relates to any plant, substance or thing that is owned by a person other than a responsible person or a person to whom a copy of the notice is given under paragraph (a), (b) or (c) — that owner.

37. Effect of provisional improvement notice

- 20 (1) Within 7 days after a notice is issued under clause 36 —
- (a) the responsible person; or
- (b) any other person, to whom a copy of the notice has been given under clause 36(8),
- 25 may request an inspector for an inspection of the matter to be conducted.
- (2) On the request being made, the operation of the notice is suspended pending the determination of the matter by an inspector.
- 30 (3) As soon as possible after a request is made, an inspection must be conducted of the work that is the subject of the disagreement, and the inspector conducting the inspection must —
- (a) confirm, vary or cancel the notice and notify the responsible person and any person to whom a copy

- of the notice has been given under clause 36(8) accordingly; and
- 5 (b) make decisions, and exercise powers, under Division 4, as the inspector considers necessary in relation to the work.
- (4) If the inspector varies a notice, the notice as so varied has effect —
- 10 (a) so far as the notice concerns obligations imposed on the responsible person that are unaffected by the variation — as if the notice as so varied resumed effect on the day of the variation; and
- (b) so far as the notice concerns new obligations imposed by virtue of the variation — as if the notice as so varied were a new notice issued on the day of the variation.
- 15 (5) If the notice is issued to a responsible person, the responsible person must —
- (a) notify each group member who is affected by the notice of the fact of the issue of the notice; and
- 20 (b) until the notice ceases to have effect, cause a copy of the notice to be displayed at or near each workplace at which the work that is the subject of the notice is being performed.
- (6) The notice ceases to have effect if —
- 25 (a) it is cancelled by an inspector or by the safety and health representative; or
- (b) the responsible person —
- 30 (i) takes the action, if any, specified in the notice; or
- (ii) if no action is so specified — takes the action necessary to prevent the further contravention, or likely contravention, concerned.

- (7) The responsible person —
- (a) must ensure that, to the extent that the notice relates to any matter over which the person has control, the notice is complied with; and
 - (b) must take reasonable steps to inform the safety and health representative who issued the notice of the action taken to comply with the notice.
- (8) For the purposes of clause 64, if the inspector confirms or varies the notice, the inspector is taken to have decided, under clause 60, to issue an improvement notice in those terms.

38. Duties of the licensee and other employers in relation to safety and health representatives

- (1) The licensee for a pipeline operation, in relation to which a designated work group having a safety and health representative has been established, must —
- (a) on being requested to do so by the representative, consult with the representative on the implementation of changes at any workplace at which some or all of the group members perform work, being changes that may affect their safety and health;
 - (b) in relation to a workplace at which some or all of the group members perform work —
 - (i) permit the representative to make any inspection of the workplace that the representative is entitled to make in accordance with clause 32(1)(a)(i) and to accompany an inspector during an inspection at the workplace by the inspector; and
 - (ii) if there is no safety and health committee in respect of the members of the workforce — on being requested to do so by the representative, consult with the representative about the development, implementation and review of measures to

ensure the safety and health of group members;

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(c) permit the representative to be present at any interview at which the representative is entitled to be present under clause 32(1)(c);

(d) provide to the representative access to any information to which the representative is entitled to obtain access under clause 32(1)(d)(i) or (ii) and to which access has been requested;

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(e) permit the representative to take any time off work, without loss of remuneration or other entitlements, that is necessary to exercise the powers of a safety and health representative; and

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(f) provide the representative with access to any amenities that are —

(i) prescribed for the purposes of this paragraph; or

(ii) necessary for the purposes of exercising the powers of a safety and health representative.

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(2) Subclause (1)(d) has effect subject to subclauses (3) and (4).

(3) The licensee must not permit a safety and health representative in relation to a designated work group to have access to information that —

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(a) is of a confidential medical nature under the control of the licensee; and

(b) relates to a person who is or was a group member,

unless —

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(c) the person has delivered to the employer a written authority permitting the representative to have access to the information; or

(d) the information is in a form that does not identify the person or enable the identity of the person to be discovered.

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- (4) The licensee is not required to give a safety and health representative access to any information in respect of which the licensee is entitled to claim, and does claim, legal professional privilege.
- 5 (5) The duties imposed by this clause on the licensee in respect of the safety and health representative for a designated work group apply equally, to the extent that the matters to which the duties relate are within the control of a work group employer or of a supervisor of particular work, to that employer and to that supervisor.
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Subdivision 4 — Safety and health committees

39. Safety and health committees

- (1) A safety and health committee must be established in relation to the members of the workforce engaged in a pipeline operation if —
- 15
- (a) the number of those members normally engaged in the pipeline operation is not less than 50 (whether or not those members are all at work in relation to the pipeline operation at the same time);
 - 20 (b) the members of the workforce are included in one or more designated work groups; and
 - (c) the licensee is requested to establish the committee by the safety and health representative for the designated work group or for one of the designated work groups.
- 25
- (2) The safety and health committee consists of —
- (a) the number of members specified in an agreement reached between the licensee and the members of the workforce; or
 - 30 (b) if there is no such agreement — an equal number of —
 - (i) members, chosen by the members of the workforce, to represent the interests of members of the workforce; and

- (ii) members, chosen by the licensee, to represent the interests of the licensee and the employer (other than the licensee) of members of the workforce.

- 5 (3) The agreement referred to in subclause (2)(a) may —
 - (a) specify the persons who are to be members to represent the interests of the licensee and employers (other than the licensee) of members of the workforce; and
 - 10 (b) provide for the way in which persons who are to be members to represent the interests of members of the workforce are to be chosen.
- (4) If regulations made for the purposes of this clause specify procedures for the selection of persons as members of safety and health committees to represent the interests of members of the workforce, an agreement referred to in subclause (2)(a) must not provide for members to be chosen in a way inconsistent with the regulations.
- 15 (5) A safety and health committee must hold a meeting at least once every 3 months.
- (6) The procedure at meetings of a safety and health committee must, except to the extent provided for by the regulations, be the procedure agreed upon by the committee.
- 20 (7) A safety and health committee must cause minutes of its meetings to be kept, and must retain those minutes for a period of not less than 3 years.
- 25 (8) This clause does not prevent a licensee from establishing, in consultation with registered unions or any other persons, committees concerned with occupational safety and health in relation to undertakings carried on by the licensee.
- 30

40. Functions of safety and health committees

- (1) A safety and health committee has the following functions —

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- (a) to assist the licensee for the pipeline operation concerned —
- 5 (i) to develop and implement measures designed to protect; and
- (ii) to review and update measures used to protect,
- the safety and health at work of members of the workforce;
- (b) to facilitate cooperation between the licensee for the pipeline operation, employers (other than the licensee) of members of the workforce, and members of the workforce, in relation to occupational safety and health matters;
- 10 (c) to assist the licensee to disseminate among members of the workforce, in appropriate languages, information relating to safety and health at work;
- 15 (d) any prescribed functions;
- (e) any other functions that are agreed between the licensee and the safety and health committee.
- 20
- (2) A safety and health committee has power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions.
- (3) This Schedule does not —
- 25 (a) impose an obligation on a person to do any act, because the person is a member of a safety and health committee, in connection with the performance of a function conferred on the committee; or
- 30 (b) render such a person liable in civil proceedings because of —
- (i) a failure to do such an act; or
- (ii) the manner in which such an act was done.

41. Duties of the licensee and other employers in relation to safety and health committees

- 5 (1) If there is a safety and health committee, the licensee and any employer (other than the licensee) of a member of the workforce must —
- (a) make available to the committee any information possessed by the licensee or that employer relating to risks to safety and health to members of the workforce; and
- 10 (b) permit any member of the committee who is a member of the workforce to take time off work, without loss of remuneration or other entitlements, as is necessary for the member adequately to participate in the performance by the committee of its functions.
- 15 (2) Subclause (1)(a) has effect subject to subclauses (3) and (4).
- (3) The licensee or any employer (other than the licensee) of a member of the workforce must not make available to a safety and health committee information of a confidential nature relating to a person who is or was a member of the workforce, unless —
- 20 (a) the person has authorised the information to be made available to the committee; or
- (b) the information is in a form that does not identify the person or enable the identity of the person to be discovered.
- 25 (4) The licensee or any employer (other than the licensee) of a member of the workforce is not required to make available to a safety and health committee any information in respect of which the licensee or employer is entitled to claim, and does claim, legal professional privilege.
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Subdivision 5 — Emergency procedures

42. Action by safety and health representatives

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- (1) If a safety and health representative for a designated work group has reasonable cause to believe that there is an imminent and serious danger to the safety or health of any person engaged in the pipeline operation or any other protected person unless a group member or group members cease to perform particular work, the representative must —
- 10
- (a) inform a person (a “**supervisor**”) supervising the group member or group members in the performance of the work of the danger; or
- (b) if no supervisor can be contacted immediately —
- 15
- (i) direct the group member or group members to cease, in a safe manner, to perform the work; and
- (ii) as soon as practicable, inform a supervisor that the direction has been given.
- 20
- (2) If a supervisor is informed under subclause (1)(a) of a danger to the safety or health of a person engaged in the pipeline operation or any other protected person, the supervisor must take the action he or she thinks appropriate to remove that danger, which may include directing a group member or group members to cease, in a safe manner, to perform the work.
- 25
- (3) If —
- (a) a safety and health representative has informed a supervisor under subclause (1)(a) of a danger; and
- 30
- (b) the representative has reasonable cause to believe that, despite any action taken by the supervisor in accordance with subclause (2), there continues to be an imminent and serious danger to the safety or health of a person engaged in the pipeline operation or any other protected person unless the group member or group members cease to perform
- 35
- particular work,

the representative must —

- (c) direct the group member or group members to cease, in a safe manner, to perform the work; and
- (d) as soon as practicable, inform the supervisor that the direction has been given.

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(4) If —

- (a) a safety and health representative gives a direction under subclause (1)(b), but is unable to agree with a supervisor whom the representative has informed under that subclause that there is a need for a direction under that subclause; or
- (b) a safety and health representative gives a direction under subclause (3)(c),

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the representative or the supervisor may request an inspector that an inspection be conducted of the work that is the subject of the direction.

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(5) As soon as possible after a request is made, an inspection must be conducted of the work that is the subject of the direction, and the inspector conducting the inspection must make decisions, and exercise powers, under Division 4 as the inspector considers necessary in relation to the work.

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(6) This clause does not limit the power of a safety and health representative under clause 32(1)(a)(iii) to request an inspector that an inspection be conducted at the workplace.

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43. Directions to perform other work

If —

- (a) a group member who is an employee has ceased to perform work, in accordance with the direction of a safety and health representative under clause 42(1)(b) or (3)(c); and
- (b) the cessation of work does not continue after —
 - (i) the safety and health representative has agreed with a person supervising work at the workplace where the work was being

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performed that the cessation of work was not, or is no longer, necessary; or

- (ii) an inspector has, under clause 42(5), made a decision to the effect that the employee should perform the work,

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

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Subdivision 6 — Exemptions

44. Exemptions

- (1) The Minister may, in accordance with the regulations, make a written order exempting a specified person or class of person from any or all of the provisions of this Division (other than this clause).
- (2) The Minister must not make an order under subclause (1) unless the Minister is satisfied on reasonable grounds that it is impracticable for the person to comply with the provision or provisions.

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Division 4 — Inspections

Subdivision 1 — Introduction

45. Simplified outline

The following is a simplified outline of this Division —

- An inspector may conduct an inspection —
 - (a) to ascertain whether a listed OSH law is being complied with;
 - (b) concerning a contravention or a possible contravention of a listed OSH law; or
 - (c) concerning an accident or dangerous occurrence that has arisen out of a pipeline operation.

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- An inspector may issue a prohibition notice to the licensee for a pipeline operation in order to remove an immediate threat to the safety and health of any person.
- 5 • An inspector may issue an improvement notice specifying action that is to be taken to prevent contravention of a listed OSH law.
- An inspector must prepare a report about an inspection and give the report to the Minister.

46. Powers, functions and duties of inspectors

- 10 (1) An inspector has the powers, functions and duties conferred or imposed by each listed OSH law.
- (2) The Minister may give written directions specifying the manner in which, and the conditions subject to which, powers conferred on inspectors by a listed OSH law are to be exercised. If the Minister does so, the powers of inspectors must be exercised in accordance with those directions.
- 15 (3) The Minister may, by notice in writing, impose restrictions, not inconsistent with any direction in force under subclause (2), on the powers that are conferred on a particular inspector by a listed OSH law. If the Minister does so, the powers of the inspector are taken to have been restricted accordingly.
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Subdivision 2 — Inspections

47. Inspections

- 25 (1) An inspector may, at any time, conduct an inspection —
 - (a) to ascertain whether a requirement of, or any requirement properly made under, a listed OSH law is being complied with;
 - 30 (b) concerning a contravention or a possible contravention of a listed OSH law; or
 - (c) concerning an accident or dangerous occurrence that has arisen out of a pipeline operation.

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- (2) The Minister may direct an inspector to conduct an inspection —
- (a) to ascertain whether a requirement of, or any requirement properly made under, a listed OSH law is being complied with;
 - (b) concerning a contravention or a possible contravention of a listed OSH law; or
 - (c) concerning an accident or dangerous occurrence that has arisen out of a pipeline operation,

and the inspector must, unless the Minister revokes the direction, conduct an inspection accordingly.

Subdivision 3 — Powers of inspectors in relation to the conduct of inspections

48. Powers of entry and search — places at which pipeline operations are carried on

- (1) An inspector may, for the purposes of an inspection, at any reasonable time during the day or night —
- (a) enter the place at which a pipeline operation is carried on and to which the inspection relates and do all or any of the following —
 - (i) search the place;
 - (ii) inspect, examine, take measurements of, or conduct tests concerning, any workplace, pipeline, plant, substance or thing at the place;
 - (iii) take photographs of, make video recordings of, or make sketches of, any workplace, pipeline, plant, substance or thing at the place;
 - (iv) inspect, take extracts from, or make copies of, any documents at the place that the inspector has reasonable grounds to believe relate, or are likely to relate, to the subject matter of the inspection;

and

(b) inspect the subsoil in the vicinity of the place to which the inspection relates.

5 (2) Immediately on entering a place at which a pipeline operation is carried on for the purposes of an inspection, an inspector must take reasonable steps to notify the purpose of entering the place to —

(a) the licensee's representative; and

10 (b) if there is a safety and health representative for a designated work group having a group member likely to be affected by the matter the subject of the inspection — that representative,

and must, on being requested to do so by the person referred to in paragraph (a) or (b), produce for inspection by that person —

15 (c) the inspector's certificate of appointment under section 62(2);

(d) a copy of the Minister's written direction (if any) to conduct the inspection; and

20 (e) a copy of the restrictions (if any) imposed on the powers of the inspector under clause 46(3).

(3) If there is a safety and health representative for a designated work group having a group member likely to be affected by the matter the subject of the inspection, the inspector must afford the safety and health representative a reasonable opportunity to consult on the matter the subject of the inspection.

49. Powers of entry and search — regulated business premises (other than places where pipeline operations carried on)

30 (1) An inspector may, for the purposes of an inspection —

(a) at any reasonable time, enter any regulated business premises (other than a place at which a pipeline operation is carried on) if the inspector has reasonable grounds to believe that there are likely to be at those premises documents that relate to a

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pipeline operation that is a subject of the inspection;
and

(b) search for, inspect, take extracts from, or make
copies of, any such documents at those premises.

5 (2) Immediately on entering premises referred to in
subclause (1), an inspector must take reasonable steps to
notify the purpose of the entry to the occupier of those
premises, and must, on being requested to do so by the
occupier, produce for inspection by the occupier —

10 (a) the inspector's certificate of appointment under
section 62(2);

(b) a copy of the Minister's written direction (if any) to
conduct the inspection; and

15 (c) a copy of the restrictions (if any) imposed on the
powers of the inspector under clause 46(3).

**50. Powers of entry and search — premises (other than
regulated business premises)**

(1) An inspector may, for the purposes of an inspection —

20 (a) enter any premises (other than regulated business
premises) if the inspector has reasonable grounds to
believe that there are likely to be at those premises
documents that relate to a pipeline operation that is
the subject of the inspection; and

25 (b) search for, inspect, take extracts from, or make
copies of, any such documents at those premises.

(2) An inspector may exercise the powers referred to in
subclause (1) to enter premises only —

30 (a) if the premises are not a residence —
(i) in accordance with a warrant under
clause 51; and
(ii) with the consent of the occupier of the
premises;

or

- (b) if the premises are a residence — with the consent of the occupier of the premises.
- (3) Immediately on entering premises referred to in subclause (1), an inspector must —
 - 5 (a) take reasonable steps to notify the purpose of the entry to the occupier of those premises;
 - (b) take reasonable steps to produce, for inspection by the occupier, the inspector's certificate of appointment under section 62(2); and
 - 10 (c) on being requested to do so by the occupier, produce, for inspection by the occupier —
 - (i) a copy of the Minister's written direction (if any) to conduct the inspection; and
 - 15 (ii) a copy of the restrictions (if any) imposed on the powers of the inspector under clause 46(3).
- (4) If —
 - (a) an inspector enters premises in accordance with a warrant under clause 51; and
 - 20 (b) the occupier of the premises is present at the premises,

the inspector must make a copy of the warrant available to the occupier.
- (5) Before obtaining the consent of a person as mentioned in subclause (2)(a) or (b), an inspector must inform the person that —
 - 25 (a) the person may refuse consent; and
 - (b) the consent may be withdrawn.
- (6) The consent of a person is not effective for the purposes of subclause (2) unless the consent is voluntary.
- 30

51. Warrant to enter premises (other than regulated business premises)

- (1) An inspector may apply to a magistrate for a warrant authorising the inspector, with any assistance as the

inspector thinks necessary, to exercise the powers referred to in clause 50(1) in relation to particular premises (other than a residence).

- 5 (2) The application must be supported by evidence on oath (whether oral or by affidavit) that sets out the grounds on which the inspector is applying for the warrant.
- (3) If the magistrate is satisfied that there are reasonable grounds for issuing the warrant, the magistrate may issue the warrant.
- 10 (4) A warrant issued under subclause (3) must state —
- (a) the name of the inspector;
 - (b) whether the inspection may be carried out at any time or only during specified hours of the day;
 - (c) the day on which the warrant ceases to have effect; and
 - 15 (d) the purposes for which the warrant is issued.
- (5) The day specified under subclause (4)(c) is not to be more than 7 days after the day on which the warrant is issued.
- 20 (6) The purposes specified under subclause (4)(d) must include the identification of the premises in relation to which the warrant is issued.

52. Obstructing or hindering inspector

25 A person must not, without reasonable excuse, obstruct or hinder an inspector in the exercise of an inspector's powers under clause 48, 49 or 50.

Penalty: \$5 500.

53. Power to require assistance and information

- 30 (1) An inspector may, to the extent that it is reasonably necessary to do so in connection with the conduct of an inspection, require —
- (a) the licensee for a pipeline operation;
 - (b) the person in charge of a pipeline operation;

- (c) a member of the workforce engaged in a pipeline operation; or
 - (d) any person representing a person referred to in paragraph (a) or (b),
- 5 to provide the inspector with reasonable assistance and amenities —
- (e) that is or are reasonably connected with the conduct of the inspection in relation to the pipeline operation; or
 - 10 (f) for the effective exercise of the inspector's powers under this Schedule in connection with the conduct of the inspection in relation to the pipeline operation.
- (2) The reasonable assistance referred to in subclause (1) includes, so far as the licensee for a pipeline operation is concerned —
- (a) appropriate transport for the inspector to and from the place to be inspected and for any equipment required by the inspector, or any article of which the inspector has taken possession; and
 - 20 (b) reasonable accommodation and means of subsistence while the inspector is at the place to be inspected.
- (3) A person must not fail, without reasonable excuse, to comply with a requirement under this clause.
- 25 Penalty: \$3 300 or imprisonment for 6 months or both.

54. Power to require the answering of questions and the production of documents or articles

- (1) If —
- 30 (a) an inspector believes on reasonable grounds that a person is capable of answering a question that is reasonably connected with the conduct of an inspection; and

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- 5
- (b) the person is —
- (i) the licensee for a pipeline operation;
 - (ii) the person in charge of a pipeline operation;
 - (iii) a member of the workforce engaged in a pipeline operation; or
 - (iv) any person representing a person referred to in subparagraph (i) or (ii),
- 10 the inspector may, to the extent that it is reasonably necessary to do so in connection with the conduct of the inspection, require the person to answer the question put by the inspector.
- (2) If, at the time when a requirement under subclause (1) is imposed on a person, the person is not physically present on regulated business premises, the person is not obliged to
- 15 comply with the requirement unless the requirement —
- (a) is in writing;
 - (b) specifies the day on or before which the question is to be answered (being at least 14 days after the day on which the requirement is imposed); and
 - (c) is accompanied by a statement to the effect that a
- 20 failure to comply with the requirement is an offence.
- (3) If —
- (a) an inspector believes on reasonable grounds that a
- 25 person is capable of producing a document or article that is reasonably connected with the conduct of an inspection; and
- (b) the person is —
- (i) the licensee for a pipeline operation;
 - (ii) the person in charge of a pipeline operation;
 - (iii) a member of the workforce engaged in a pipeline operation; or
 - (iv) any person representing a person referred to
- 30 in subparagraph (i) or (ii),

the inspector may, to the extent that it is reasonably necessary to do so in connection with the conduct of the inspection, require the person to produce the document or article.

- 5 (4) If, at the time when a requirement under subclause (3) is imposed on a person, the person is not physically present on regulated business premises, the person is not obliged to comply with the requirement unless the requirement —
- (a) is in writing;
- 10 (b) specifies the day on or before which the document or article is to be produced (being at least 14 days after the day on which the requirement is imposed); and
- (c) is accompanied by a statement to the effect that a failure to comply with the requirement is an offence.
- 15
- (5) A person must not —
- (a) fail, without reasonable excuse, to comply with a requirement under this clause; or
- 20 (b) in purported compliance with a requirement under this clause, give information that is false or misleading in a material particular.

Penalty: \$3 300 or imprisonment for 6 months or both.

55. Privilege against self-incrimination

- 25 (1) A person is not excused from answering a question or producing a document or article when required to do so under clause 54 on the ground that the answer to the question, or the production of the document or article, may tend to incriminate the person or make the person liable to a
- 30 penalty.
- (2) However —
- (a) the answer given or document or article produced;
- (b) answering the question or producing the document or article; or

- (c) any information, document or thing obtained as a direct or indirect consequence of the answering of the question or the production of the document or article,

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is not admissible in evidence against the person —

- (d) in any civil proceedings; or
- (e) in any criminal proceedings other than proceedings for an offence against clause 54.

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

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- (1) In conducting an inspection, an inspector may, to the extent that it is reasonably necessary for the purposes of inspecting, examining, taking measurements of or conducting tests concerning, any plant, substance or thing at a place at which a pipeline operation is carried out in connection with the inspection —

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- (a) take possession of the plant, substance or thing and remove it from the place; or
- (b) take a sample of the substance or thing and remove that sample from the place.

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- (2) On taking possession of plant, a substance or a thing, or taking a sample of a substance or thing, the inspector must, by notice in writing, inform —

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- (a) the licensee for the pipeline operation;
- (b) if the plant, substance or thing is used for the performance of work by an employer of a member or members of the workforce engaged in the pipeline operation other than the licensee for the pipeline operation — that employer;
- (c) if the plant, substance or thing is owned by a person other than a person mentioned in paragraph (a) or (b) — that person; and
- (d) if there is a safety and health representative for a designated work group that includes a member of

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the workforce who is affected by the matter to which the inspection relates — that representative, of the taking of possession or the taking of the sample, as the case may be, and the reasons for it.

- 5 (3) If the inspector gives the notice to the licensee for the pipeline operation to which the inspection relates, the licensee's representative must cause the notice to be displayed in a prominent place at the workplace from which the plant, substance or thing was removed.
- 10 (4) If the inspector takes possession of plant, a substance or a thing at a workplace for the purpose of inspecting, examining, taking measurements of or conducting tests concerning, the plant, substance or thing, the inspector must —
- 15 (a) ensure that the inspection, examination, measuring or testing is conducted as soon as practicable; and
- (b) return it to the workplace as soon as practicable afterwards.
- 20 (5) As soon as practicable after completing any such inspection, examination, measurement or testing, the inspector must give a written statement setting out the results to each person whom the inspector is required to notify under subclause (2).

57. Power to direct that workplace etc. not be disturbed

- 25 (1) An inspector may give a direction under subclause (2) if, in conducting an inspection, the inspector has reasonable grounds to believe that it is reasonably necessary to do so in order to —
- 30 (a) remove an immediate threat to the safety or health of any person; or
- (b) allow the inspection, examination or taking of measurements of, or conducting of tests concerning, a pipeline, or any plant, substance or thing, for use in a pipeline operation.

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- (2) If subclause (1) applies, the inspector may direct, by written notice given to the licensee's representative, that the licensee must ensure that —
- 5 (a) a particular workplace; or
- (b) particular plant, or a particular substance or thing, not be disturbed for a period specified in the direction.
- (3) The period specified in the direction must be a period that the inspector has reasonable grounds to believe is necessary in order to remove the threat or to allow the inspection, examination, measuring or testing to take place.
- 10 (4) The direction may be renewed by another direction in the same terms.
- (5) If an inspector gives a notice to the licensee's representative under subclause (2), the licensee's representative must cause the notice to be displayed in a prominent place at the workplace —
- 15 (a) that is to be left undisturbed; or
- (b) where the plant, substance or thing that is to be left undisturbed is located.
- 20 (6) As soon as practicable after giving the direction, the inspector must take reasonable steps to notify —
- (a) if the workplace, plant, substance or thing to which the direction relates is owned by a person other than the licensee for the pipeline operation — that person; and
- 25 (b) if there is a safety and health representative for a designated work group that includes a group member performing work —
- (i) at a workplace; or
- 30 (ii) involving the plant, substance or thing, to which the direction relates — that representative, of the direction and the reasons for giving it.

- (7) The licensee for a pipeline operation to which a direction concerning a workplace, plant, substance or a thing relates must ensure that the direction is complied with.

Penalty: \$27 500.

- 5 (8) A direction under subclause (2) must be accompanied by a statement setting out the reasons for the direction.

58. Power to issue prohibition notices

- 10 (1) If, having conducted an inspection, an inspector is satisfied on reasonable grounds that it is reasonably necessary to issue a prohibition notice to the licensee for a pipeline operation in order to remove an immediate threat to the safety or health of any person, the inspector may issue a prohibition notice, in writing, to the licensee.
- 15 (2) The notice must be issued to the licensee by giving it to the licensee's representative.
- (3) The notice must —
- 20 (a) specify the activity in respect of which, in the inspector's opinion, the threat to safety or health has arisen, and set out the reasons for that opinion; and
- (b) either —
- (i) direct the licensee to ensure that the activity is not engaged in; or
- (ii) direct the licensee to ensure that the activity is not engaged in in a specified manner.
- 25 (4) A specified manner may relate to any one or more of the following —
- (a) any workplace, or part of a workplace, at which the activity is not to be engaged in;
- 30 (b) any plant or substance that is not to be used in connection with the activity;
- (c) any procedure that is not to be followed in connection with the activity.

- (5) The notice may specify action that may be taken to satisfy an inspector that adequate action has been taken to remove the threat to safety and health.
- (6) The licensee's representative must —
- 5 (a) give a copy of the notice to each safety and health representative (if any) for any designated work group having group members performing work that is affected by the notice; and
- 10 (b) cause a copy of the notice to be displayed at a prominent place at or near each workplace at which that work is performed.
- (7) If the notice relates to any workplace, plant, substance or thing that is owned by a person other than the licensee, the inspector must, upon issuing the notice, give a copy of the notice to that person.
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59. Compliance with prohibition notice

- (1) A licensee must ensure that a prohibition notice issued to the licensee is complied with.
Penalty: \$27 500.
- 20 (2) If an inspector is satisfied that action taken by the licensee to remove the threat to safety and health in respect of which the notice was issued is not adequate, the inspector must inform the licensee accordingly.
- 25 (3) A prohibition notice ceases to have effect when an inspector notifies the licensee that the inspector is satisfied that the licensee has taken adequate action to remove the threat to safety or health.
- 30 (4) In making a decision under subclause (2), an inspector may exercise any of the powers of an inspector conducting an inspection that the inspector considers necessary for the purposes of making the decision.

60. Power to issue improvement notices

- (1) If, in conducting an inspection, an inspector believes on reasonable grounds that a person —
- (a) is contravening a listed OSH law; or
 - (b) has contravened a provision of a listed OSH law and is likely to contravene that provision again,
- the inspector may issue an improvement notice, in writing, to the person (the “**responsible person**”).
- (2) If the responsible person is the licensee, the improvement notice may be issued to the licensee by giving it to the licensee’s representative.
- (3) If the responsible person is an employer (other than the licensee) of members of the workforce, but it is not practicable to give the notice to that employer —
- (a) the improvement notice may be issued to the employer by giving it to the licensee’s representative; and
 - (b) if the notice is so issued — the licensee must ensure that a copy of the notice is given to the employer as soon as practicable afterwards.
- (4) The notice —
- (a) must specify the contravention that the inspector believes is occurring or is likely to occur, and set out the reasons for that belief;
 - (b) must specify a reasonable period within which the responsible person is to take the action necessary to prevent any further contravention or to prevent the likely contravention, as the case may be; and
 - (c) may specify action that the responsible person is to take during the period specified in the notice.
- (5) If the inspector believes on reasonable grounds that it is appropriate to do so, the inspector may, in writing and before the end of the period, extend the period specified in the notice.

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- 5
- (6) If an improvement notice is issued to an employer (other than the licensee) of members of the workforce in circumstances other than the circumstance referred to in subclause (3), the employer must immediately ensure that a copy of the notice is given to the licensee's representative.
- (7) If a notice is issued to the licensee or to an employer (other than the licensee) of members of the workforce, the licensee's representative must —
- 10
- (a) give a copy of the notice to each safety and health representative for a designated work group having group members performing work that is affected by the notice; and
- (b) cause a copy of the notice to be displayed in a prominent place at or near each workplace at which the work is being performed.
- 15
- (8) On issuing a notice, the inspector must give a copy of the notice to —
- (a) if the notice is —
- 20
- (i) given to a member of the workforce who is an employee; and
- (ii) in connection with work performed by the employee,
the employer of that employee;
- (b) if the notice relates to any workplace, plant, substance or thing that is owned by a person other than —
- 25
- (i) a responsible person; or
- (ii) a person who is an employer referred to in paragraph (a),
that owner; and
- 30
- (c) if the notice is issued to a person who owns any workplace, plant, substance or thing, because of which a contravention of a listed OSH law has occurred or is likely to occur —
- 35
- (i) the licensee for the pipeline operation; and

- (ii) if the employer of employees who work in that workplace or who use that plant, substance or thing is a person other than the licensee — that employer.

5 **61. Compliance with improvement notice**

A person to whom an improvement notice is issued must comply with it to the extent that the notice relates to any matter over which the person has control.

Penalty: \$11 000.

10 **62. Notices not to be tampered with or removed**

(1) A person must not, without reasonable excuse, tamper with any notice that has been displayed under clause 56(3), 57(5), 58(6) or 60(7) while that notice is so displayed.

15 (2) If a notice has been displayed under clause 56(3), a person must not, without reasonable excuse, remove the notice until the plant or thing to which the notice relates is returned to the workplace from which it was removed.

20 (3) If a notice has been displayed under clause 57(5), 58(6) or 60(7), a person must not, without reasonable excuse, remove the notice before it has ceased to have effect.

Penalty applicable to subclauses (1), (2) and (3): \$11 000.

Subdivision 4 — Reports on inspections

63. Reports on inspections

25 (1) If an inspector has conducted an inspection, the inspector must, as soon as practicable, prepare a written report relating to the inspection and give the report to the Minister.

(2) The report must include —

- 30 (a) the inspector's conclusions from conducting the inspection and the reasons for those conclusions;
- (b) any recommendations that the inspector wishes to make arising from the inspection; and
- (c) any other prescribed matters.

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- 5
- (3) As soon as practicable after receiving the report, the Minister must give a copy of the report, together with any written comments that the Minister wishes to make —
- (a) to the licensee for the pipeline operation to which the report relates;
- (b) if the report relates to activities performed by an employee of another person — that other person; and
- 10 (c) if the report relates to any plant, substance or thing owned by another person — that other person.
- (4) The Minister may, in writing, request the licensee or any other person to whom the report is given to provide to the Minister, within a reasonable period specified in the request, details of —
- 15 (a) any action proposed to be taken as a result of the conclusions or recommendations contained in the report; and
- 20 (b) if a notice has been issued under clause 58 or 60 in relation to work being performed for the licensee or that other person — any action taken, or proposed to be taken, in respect of that notice,
- and the licensee or that other person must comply with the request.
- 25 (5) As soon as practicable after receiving a report, the licensee for the pipeline operation must give a copy of the report, together with any written comment made by the Minister on the report —
- 30 (a) if there is a least one safety and health committee in respect of some or all of the members of the workforce — to each such committee; and
- 35 (b) if there is no such committee in respect of some or all of the members of the workforce, but some or all of those members (in respect of which there is no such committee) are in at least one designated work group for which there is a safety and health

representative — to each such safety and health representative.

Subdivision 5 — Reviews of inspectors' decisions

64. Reviews of inspectors' decisions

- 5 (1) If an inspector, in conducting an inspection or having conducted an inspection —
- 10 (a) decides, under clause 37, to confirm or vary a provisional improvement notice;
 - (b) decides, under clause 56, to take possession of plant, a substance or a thing at a workplace;
 - (c) decides, under clause 57, to direct that a workplace, a part of a workplace, plant, a substance or a thing not be disturbed;
 - 15 (d) decides, under clause 58, to issue a prohibition notice;
 - (e) decides, under clause 59, that the licensee for a pipeline operation to whom a prohibition notice has been issued has not taken adequate action to remove the threat to safety and health that caused the notice to be issued; or
 - 20 (f) decides, under clause 60, to issue an improvement notice,
- a person referred to in subclause (2) may apply in writing to the reviewing authority for a review of the decision.
- 25 (2) The following persons may apply for a review of a decision, as is relevant to the case —
- 30 (a) the licensee for the pipeline operation or any employer (other than the licensee) who is affected by the decision;
 - (b) a person to whom a notice has been issued under clause 36(2) or 60(1);
 - (c) the safety and health representative for a designated work group having a group member affected by the decision;

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- 5
- (d) a workforce representative in relation to the designated work group that includes a group member who is affected by the decision and who has requested the workforce representative to apply for a review of the decision;
- 10
- (e) if there is no such designated work group, and a member of the workforce affected by the decision has requested a workforce representative in relation to the member to apply for a review of the decision — that workforce representative;
- (f) a person who owns any workplace, plant, substance or thing to which the decision referred to in subclause (1)(a), (b), (c) or (f) relates.
- 15
- (3) If an inspector, having conducted an inspection —
- (a) decides under clause 37 to cancel a provisional improvement notice; or
- 20
- (b) decides under clause 59 that the licensee for a pipeline operation to whom a prohibition notice has been issued has taken adequate action to remove the threat to safety and health that caused the notice to be issued,
- the following persons may apply in writing to the reviewing authority for a review of the decision —
- 25
- (c) the safety and health representative for a designated work group having a group member affected by the decision;
- 30
- (d) a workforce representative in relation to the designated work group that includes a group member who is affected by the decision and who has requested the workforce representative to apply for the review;
- 35
- (e) if there is no such designated work group, and a member of the workforce affected by the decision has requested a workforce representative in relation to the member to apply for the review — that workforce representative.

- (4) An application under subclause (2) or (3) must be made —
- (a) not later than 7 days after the day on which the person applying received notice of the inspector's decision; or
 - (b) within such further period as the reviewing authority may allow.
- (5) A person, other than the operator of the pipeline operation concerned, who applies for a review of a decision must, as soon as is practicable, give a copy of the application to the operator.
Penalty: \$5 000.
- (6) The reviewing authority is to give notice in writing of the decision on the reference and the reasons for the decision to —
- (a) the person who referred the matter for review; and
 - (b) if that person is not the operator of the pipeline operation concerned, to the operator.
- (7) Subject to this clause, applying for a review of a decision does not affect the operation of the decision or prevent the taking of action to implement that decision, except to the extent that the reviewing authority makes an order to the contrary.
- (8) If the decision to be reviewed is a decision under clause 60 to issue an improvement notice, the operation of the notice is suspended pending determination of the review, except to the extent that the reviewing authority makes an order to the contrary.
- (9) If the decision to be reviewed is a decision of an inspector under clause 37 to confirm or vary a provisional improvement notice whose operation has been suspended pending the inspection of the matter to which the notice relates, the operation of the notice is further suspended pending determination of the review, except to the extent that the reviewing authority makes an order to the contrary.

- (10) In this clause —
“**reviewing authority**” means a person prescribed by the regulations to be a reviewing authority for the purposes of this clause.

5 **65. Powers of reviewing authority on review**

- (1) On a review of a decision under clause 64, the reviewing authority may —
- 10 (a) affirm the decision;
- (b) affirm the decision with such modifications as the reviewing authority considers appropriate; or
- (c) revoke the decision and make such other decision with respect to the matter as the reviewing authority thinks fit,

15 and the decision has effect or, as the case may be, ceases to have effect accordingly.

- (2) If —
- (a) the decision being reviewed is a decision under clause 56 to take possession of plant, a substance or a thing at a workplace; and
- 20 (b) the decision is not affirmed,

the inspector who made the decision must ensure that, to the extent that the decision is not affirmed, the plant, substance or thing is returned to the workplace as soon as practicable.

Division 5 — Referrals to the Tribunal

25 **66. Decision may be referred to Tribunal**

- (1) If a person given notice of a decision under clause 21(3)(b) or 64(6) is not satisfied with the reviewing authority’s decision under that section, the person may refer the decision to the Tribunal for further review.
- 30 (2) A reference under subclause (1) must be made —
- (a) not later than 7 days after the day on which the person received notice of the decision; or

(b) within such further period as the Tribunal may allow.

5 (3) A person, other than the operator of the pipeline operation concerned, who refers a matter for review under this clause must, as soon as is practicable, give a copy of the duly completed prescribed form to the operator.

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

67. Determination by Tribunal

10 (1) On a reference under clause 66, the Tribunal is to inquire into the circumstances relating to the decision, and may —

(a) affirm the decision of the reviewing authority;

(b) affirm the decision of the reviewing authority with such modifications as the Tribunal considers appropriate; or

15 (c) revoke the decision of the reviewing authority and make such other decision with respect to the notice as the Tribunal thinks fit,

and the decision has effect or, as the case may be, ceases to have effect accordingly.

20 (2) A review under this clause —

(a) is to be in the nature of a rehearing; and

(b) is to be completed by the Tribunal as quickly as is practicable.

25 (3) The Tribunal is to give notice in writing of its decision on the reference and the reasons for the decision to —

(a) the person who referred the matter for review; and

(b) if that person is not the operator of the pipeline operation concerned, to the operator.

68. Effect of pending review by Tribunal

30 (1) Subject to this clause, a reference to the Tribunal for further review of a decision does not affect the operation of the decision or prevent the taking of action to implement that

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

- 5
- (2) If the decision to be reviewed concerns a decision under clause 60 to issue an improvement notice, the operation of the notice is suspended pending determination of the review, except to the extent that the Tribunal makes an order to the contrary.
- 10
- (3) If the decision to be reviewed concerns a decision of an inspector under clause 37 to confirm or vary a provisional improvement notice whose operation has been suspended pending the inspection of the matter to which the notice relates, the operation of the notice is further suspended pending determination of the review, except to the extent that the Tribunal makes an order to the contrary.

15 **69. Jurisdiction of Tribunal**

- (1) This clause applies where —
- (a) under clause 66 a matter is referred to the Tribunal; or
- 20 (b) under clause 30 an application is made to the Tribunal.
- (2) Where this clause applies —
- (a) the matter or application may be heard and determined; and
- 25 (b) a determination made by the Tribunal on the matter or application has effect, and may be appealed against and enforced,
- as if it were —
- (c) a matter in respect of which jurisdiction is conferred on the Tribunal by Part VIB of the *Occupational Safety and Health Act 1984*; or
- 30 (d) a determination made for the purposes of that Part.
- (3) The provisions of —
- (a) Part VIB of the *Occupational Safety and Health Act 1984*; and

- (b) the *Industrial Relations Act 1979* applied by that Part,

have effect for the purposes of this clause with all necessary changes.

- 5 (4) In the operation of subclause (3), section 51J(1) of the *Occupational Safety and Health Act 1984* has effect as if it were expressed to apply where a matter has been referred to the Tribunal under clause 66 in relation to a decision made under clause 21.

10

Division 6 — General

70. Notifying and reporting accidents and dangerous occurrences

- (1) If, arising from a pipeline operation, there is —
- 15 (a) an accident that causes the death of, or serious personal injury to, any person;
- (b) an accident that causes a member of the workforce to be incapacitated from performing work for a period prescribed for the purposes of this paragraph; or
- 20 (c) a dangerous occurrence,

the licensee must, in accordance with the regulations, give the Minister notice of, and a report about, the accident or dangerous occurrence.

Penalty: \$5 000.

- 25 (2) Regulations made for the purposes of subclause (1) (other than regulations made for the purpose of subclause (1)(b)) may prescribe —
- 30 (a) the time within which, and the manner in which, notice of an accident or dangerous occurrence is to be given, and the form of the notice; and
- (b) the time within which, and the manner in which, a report of an accident or dangerous occurrence is to be given, and the form of the report.

- (3) Subclause (2) does not limit regulations that may be made for the purposes of subclause (1).

71. Records of accidents and dangerous occurrences to be kept

- 5 (1) The licensee for a pipeline operation must maintain, in accordance with the regulations, a record of each accident or dangerous occurrence in respect of which the licensee is required by clause 67 to notify the Minister.
- 10 (2) Regulations made for the purposes of subclause (1) may prescribe —
 - (a) the nature of the contents of a record maintained under this clause; and
 - (b) the period for which the record must be retained.
- 15 (3) Subclause (2) does not limit regulations that may be made for the purposes of subclause (1).

72. Codes of practice

- 20 (1) The regulations may prescribe codes of practice for the purpose of providing practical guidance to licensees for pipeline operations and employers (other than licensees) of members of the workforce engaged in pipeline operations.
- (2) A person is not liable in any civil or criminal proceedings for contravening a code of practice.

73. Use of codes of practice in proceedings

- 25 (1) This clause applies if, in any proceedings for an offence against a listed OSH law, it is alleged that a person contravened a provision of a listed OSH law in relation to which a code of practice was in effect at the time of the alleged contravention.
- 30 (2) The code of practice is admissible in evidence in those proceedings.

(3) If the court is satisfied, in relation to any matter which it is necessary for the prosecution to prove in order to establish the alleged contravention, that —

5

(a) any provision of the code of practice is relevant to that matter; and

(b) the person failed at any material time to comply with that provision of the code of practice,

10

that matter is treated as proved unless the court is satisfied that in respect of that matter the person complied with that provision of the listed OSH law otherwise than by complying with the code of practice.

74. Interference etc. with equipment etc.

15

A person must not, without reasonable excuse, do anything that results in the interference with, or the rendering ineffective of, any protective equipment or safety device provided for the occupational safety and health of members of the workforce engaged in a pipeline operation if the person knew (or ought reasonably to have known) that the equipment or device was protective equipment or a safety device.

20

Penalty: \$3 300 or imprisonment for 6 months or both.

75. No charges to be levied on members of workforce

25

The licensee for a pipeline operation or an employer (other than the licensee) of members of the workforce engaged in a pipeline operation must not levy, or permit to be levied, on a member of the workforce any charge in respect of anything done or provided in accordance with a listed OSH law in order to ensure the occupational safety and health of persons engaged in the pipeline operation or any other protected persons.

30

Penalty: \$27 500.

76. Victimisation

(1) An employer (whether the licensee or another person) must not —

- 5 (a) dismiss an employee;
- (b) perform an act that results in injury to an employee in his or her employment;
- (c) perform an act that prejudicially alters the employee's position (whether by deducting or withholding remuneration or by any other means);
- 10 or
- (d) threaten to do any of those things,

because the employee —

- 15 (e) has complained or proposes to complain about a matter concerning the safety or health of employees at work;
- (f) has assisted or proposes to assist, by giving information or otherwise, the conduct of an inspection; or
- 20 (g) has ceased, or proposes to cease, to perform work, in accordance with a direction by a safety and health representative under clause 42(1)(b) or (3)(c), and the cessation or proposed cessation does not continue after —
 - 25 (i) the safety and health representative has agreed with a person supervising the work that the cessation or proposed cessation was not, or is no longer, necessary; or
 - (ii) an inspector has, under clause 42(5), made a decision that has the effect that the
 - 30 employee should perform the work.

Penalty: \$27 500.

(2) In proceedings for an offence against subclause (1), if all the relevant facts and circumstances, other than the reason for an action alleged in the charge, are proved, the defendant has the onus of establishing that the action was not taken for that reason.

77. Institution of prosecutions

- 5
- (1) Proceedings for an offence against a listed OSH law may be instituted by an inspector but an inspector is not to be personally responsible for any costs incurred by or awarded against the inspector in connection with any proceeding for an offence against a listed OSH law.
- 10
- (2) A safety and health representative for a designated work group may request an inspector to institute proceedings for an offence against a listed OSH law in relation to the occurrence of an act or omission if —
- 15
- (a) a period of 6 months has elapsed since the act or omission occurred;
- (b) the safety and health representative considers that the occurrence of the act or omission constitutes an offence against a listed OSH law; and
- (c) proceedings in respect of the offence have not been instituted.
- 20
- (3) A workforce representative in relation to a designated work group may request an inspector to institute proceedings for an offence against a listed OSH law in relation to the occurrence of an act or omission if —
- 25
- (a) a period of 6 months has elapsed since the act or omission occurred;
- (b) the workforce representative considers that the occurrence of the act or omission constitutes an offence against a listed OSH law;
- (c) proceedings in respect of the offence have not been instituted; and
- 30
- (d) a group member included in the group requests the workforce representative to request an inspector to institute the proceedings.
- (4) A request under subclause (2) or (3) must be in writing.
- 35
- (5) An inspector must, within 3 months after receiving the request, advise the safety and health representative or the workforce representative, as the case may be, whether

proceedings under subclause (1) have been or will be instituted, and, if not, give reasons why not.

78. Conduct of directors, employees and agents

- 5
- (1) This clause has effect for the purposes of a proceeding for an offence against a listed OSH law.
- (2) If it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show —
- 10
- (a) that the conduct was engaged in by a director, employee or agent of the body corporate within the scope of actual or apparent authority; and
- (b) that the director, employee or agent had the state of mind.
- 15
- (3) Any conduct engaged in on behalf of a body corporate by a director, employee or agent of the body corporate within the scope of actual or apparent authority is taken to have been engaged in also by the body corporate unless it establishes that it took reasonable precautions and exercised due diligence to avoid the conduct.
- 20
- (4) If it is necessary to establish the state of mind of a natural person in relation to particular conduct, it is sufficient to show —
- 25
- (a) that the conduct was engaged in by an employee or agent of the natural person within the scope of actual or apparent authority; and
- (b) that the employee or agent had the state of mind.
- 30
- (5) Any conduct engaged in on behalf of a natural person by an employee or agent of the natural person within the scope of actual or apparent authority is taken to have been engaged in also by the natural person unless the natural person establishes that he or she took reasonable precautions and exercised due diligence to avoid the conduct.
- (6) If —
- (a) a natural person is found guilty of an offence; and

- (b) he or she would not have been found guilty of the offence if subclauses (4) and (5) had not been enacted,

he or she is not liable to be punished by imprisonment for that offence.

- (7) A reference in subclause (2) or (4) to the state of mind of a person includes a reference to —
 - (a) the person’s knowledge, intention, opinion, belief or purpose; and
 - (b) the person’s reasons for the intention, opinion, belief or purpose.

79. Act not to give rise to other liabilities etc.

This Schedule does not —

- (a) confer a right of action in any civil proceeding in respect of any contravention of a listed OSH law; or
- (b) confer a defence to an action in any civil proceeding or otherwise affect a right of action in any civil proceeding.

80. Circumstances preventing compliance may be defence to prosecution

It is a defence to a prosecution for a contravention of a listed OSH law if the defendant proves that it was not practicable to comply with it because of an emergency prevailing at the relevant time.

81. Regulations — general

- (1) The regulations may prescribe any of the following —
 - (a) procedures for the selection of persons, under clause 39, as members of safety and health committees, to represent the interests of members of the workforce engaged in a pipeline operation;
 - (b) procedures to be followed at meetings of safety and health committees;

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- 5
- (c) the manner in which notices are to be served under this Schedule or the regulations;
 - (d) the practice and procedure to be followed in relation to the review of decisions under clause 21 or 64 by reviewing authorities;
 - (e) forms for the purposes of this Schedule or the regulations.
- 10
- (2) If the Minister is satisfied that —
- (a) a power, function or duty is conferred or imposed on a person under a law of this State or the Commonwealth; and
 - (b) the proper exercise of the power or performance of the function or duty is or would be prevented by this Schedule or a provision of this Schedule,
- 15
- regulations made for the purposes of this subclause may declare that this Schedule, or the provision, as the case may be, does not apply to that person, or does not apply to that person in the circumstances specified in the regulations.
- 20
- (3) Regulations made for the purposes of subclause (2) do not remain in force for longer than 5 years after they commence, but this subclause does not prevent the making of further regulations of the same substance.
- 25
- (4) In subclause (2) —
“**this Schedule**” includes regulations made for the purposes of this Schedule.

”.

Part 4 — *Petroleum (Submerged Lands) Act 1982*

33. The Act amended

The amendments in this Part are to the *Petroleum (Submerged Lands) Act 1982**.

5 [* Reprinted as at 6 August 1999.
For subsequent amendments see *Western Australian
Legislation Information Tables for 2004, Table 1, p. 333.*]

34. Section 4 amended

10 Section 4 is amended by inserting in the appropriate
alphabetical positions the following definitions —

“

15 “**Commonwealth Minister**” means the Minister of the
Crown in right of the Commonwealth for the time
being administering the Commonwealth Act, and
includes another Minister for the time being acting
for and on behalf of that Minister;

“**facility**” has the same meaning as in Schedule 5;

20 “**interstate Minister**” means the Minister of the
Crown in right of a State (other than Western
Australia) or of the Northern Territory who is for
the time being authorised under the law of that
State or Territory to perform the functions of a
Designated Authority under the Commonwealth
Act;

25 “**listed OSH law**” has the meaning given in
section 151C;

“**offshore petroleum operation**” means any operation
(including a diving operation) that —

- 30 (a) relates to —
(i) the exploration for petroleum; or

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- (ii) the recovery, processing, storage, offloading or piped conveyance of petroleum;
- (b) if the operation is a diving operation, takes place in the adjacent area; and
- (c) if the operation is not a diving operation, takes place at a facility;

5
10
“**OHS inspector**” means an OHS inspector appointed under the Commonwealth Act;

“**Safety Authority**” means the National Offshore Petroleum Safety Authority under the Commonwealth Act;

”.

35. Section 11 amended

15 Section 11 is amended by deleting “Division” and inserting instead —

“ Part ”.

36. Part IIA inserted

After section 15 the following Part is inserted —

20 “

Part IIA — Application of laws

15A. Disapplication of State occupational safety and health laws

25 (1) The prescribed occupational safety and health laws do not apply in relation to —

- (a) a facility;
- (b) a person at a facility;
- (c) a person near a facility, to the extent to which the person is affected by —
 - 30 (i) a facility; or

(ii) activities that take place at a facility;

or

(d) activities that take place at a facility.

5 (2) A reference in subsection (1) to the prescribed occupational safety and health laws is a reference to such of the provisions of those laws that, but for subsection (1), would apply in the adjacent area under the *Off-shore (Application of Laws) Act 1982* or the cooperative scheme as defined by section 3 of the

10

Crimes at Sea Act 2000.

(3) In this section—

“prescribed occupational safety and health laws”

means any laws of the State relating to occupational safety and health (whether or not they also relate to other matters) that are prescribed by the regulations for the purposes of this section.

15

(4) This section applies despite anything to the contrary in the *Off-shore (Application of Laws) Act 1982* or the *Crimes at Sea Act 2000*.

20

”.

37. Section 89 repealed

Section 89 is repealed.

38. Section 97 amended

25 (1) 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”.

30 (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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- (3) 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”.

39. Section 124B inserted

5 After section 124A the following section is inserted —

“

124B. Interfering with offshore petroleum installation or operation

- 10 (1) A person must not intentionally or recklessly —
- (a) cause damage to, or interfere with, any structure or vessel in the adjacent area that is, or is to be, used in an offshore petroleum operation; or
- 15 (b) interfere with any offshore petroleum operation.

Penalty: imprisonment for 10 years.

- (2) In this section —

20 “**structure**” means any fixed, moveable or floating structure or installation and includes a pipeline, pumping station, tank station and valve station.

”.

40. Section 125 amended

- 25 (1) Section 125(1) is amended by deleting “public service officer within the meaning of the *Public Sector Management Act 1994* to be an inspector for the purposes of this Act and the regulations.” and inserting instead —

“

30 person to be an inspector for such or all of the purposes of this Act except Part IIIA as are specified in the instrument of appointment.

”.

- (2) Section 125(2) is amended by deleting “he is an inspector for the purposes of this Act and the regulations.” and inserting instead —

“

5 the person is an inspector for the purposes specified in the certificate.

”.

41. Section 126 amended

10 Section 126(1) is amended by deleting “and the regulations,” and inserting instead —

“ other than Part IIIA, ”.

42. Section 126A inserted

After section 126 the following section is inserted —

“

15 **126A. Protection from liability for wrongdoing**

- (1) An action in tort does not lie against a person for anything that the person has done, in good faith, in the performance or purported performance of a function under this Act.
- 20 (2) The protection given by subsection (1) applies even though the thing done as described in that subsection may have been capable of being done whether or not this Act had been enacted.
- 25 (3) Despite subsection (1), the State is not relieved of any liability that it might have for another person having done anything as described in that subsection.
- (4) In this section a reference to the doing of anything includes a reference to the omission to do anything.

”.

43. Section 137A inserted

After section 137 the following section is inserted —

“

137A. Evidentiary matters

- 5 (1) In a proceeding for an offence against this Act an
averment in the complaint that at a particular time —
- (a) a particular operation was an offshore
petroleum operation;
 - (b) a particular vessel or structure was a facility;
 - 10 (c) a particular person was the operator of a
facility;
 - (d) a particular person was in control of a particular
part of a facility, or of any particular work
carried out at a facility;
 - 15 (e) a particular person was an employer who
carried on an activity at a facility;
 - (f) a particular person was an employer of a
particular person or particular persons who
worked at a facility;
 - 20 (g) a particular person was an employee or
inspector,
- is to be taken to have been proved in the absence of
evidence to the contrary.
- 25 (2) In a proceeding for an offence against this Act, proof is
not required as to any of the following matters, unless
evidence is given to the contrary —
- (a) a delegation under section 16 by the Minister of
a power, function or duty;

- 5
- (b) the authority of any person to institute a proceeding for an offence against this Act other than an offence against a listed OSH law;
 - (c) the authority of the Safety Authority or an inspector to institute a proceeding for an offence against a listed OSH law.

10

(3) In a proceeding for an offence against this Act, production of a copy of —

- (a) a code of practice;
- (b) an Australian Standard; or
- (c) an Australian/New Zealand Standard,

15

purporting to be certified by the CEO to be a true copy as at any date or during any period is, without proof of the signature of the CEO, sufficient evidence of the contents of the code of practice or Standard as at that date or during that period.

(4) In subsection (3) —

20

“**Australian Standard**” means a document having that title published by Standards Australia;

20

“**Australian/New Zealand Standard**” means a document having that title jointly published by Standards Australia and the Standards Council of New Zealand;

25

“**CEO**” means the chief executive officer of the department of the Public Service principally assisting in the administration of this Act.

”.

44. Part IIIA inserted

After section 151 the following Part is inserted —

“

Part IIIA — Occupational safety and health

5

Division 1 — Introduction

151A. Definitions

In this Part —

10

“**Board**” means the National Offshore Petroleum
Safety Authority Board under the Commonwealth
Act;

“**CEO**” means the Chief Executive Officer of the
Safety Authority.

151B. Occupational safety and health

Schedule 5 has effect.

15

151C. Listed OSH laws

For the purposes of this Act —

“**listed OSH law**” means —

20

(a) section 124B, to the extent to which that
section relates to —

(i) damage to, or interference with, a
facility; or

(ii) interference with any operation or
activity being carried out, or any works
being executed, on, by means of, or in
connection with, a facility;

25

(b) Schedule 5;

(c) a regulation made for the purposes of
Schedule 5;

- 5
- (d) a regulation made for the purposes of section 151D; or
 - (e) any other written law relating to occupational safety and health matters that is prescribed for the purposes of this paragraph.

151D. Regulations relating to occupational safety and health

- 10
- (1) The regulations may make provision in relation to the occupational safety and health of persons at or near a facility who are under the control of a person who is carrying on an offshore petroleum operation.
 - (2) Without limiting subsection (1), regulations for the purpose of that subsection may —
 - 15 (a) require a person who is carrying on an offshore petroleum operation to establish and maintain a system of management to secure the occupational safety and health of persons referred to in that subsection; and
 - 20 (b) specify requirements with which the system must comply.

Division 2 — Functions and powers of the Safety Authority

151E. Safety Authority's functions

- 25
- The Safety Authority has the following functions —
- (a) the functions conferred on it under this Act in relation to offshore petroleum operations;
 - (b) to promote the occupational safety and health of persons engaged in offshore petroleum operations;
 - 30 (c) to develop and implement effective monitoring and enforcement strategies to secure

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compliance by persons with their occupational safety and health obligations under this Act;

(d) to —

5

(i) investigate accidents, occurrences and circumstances that affect, or have the potential to affect, the occupational safety and health of persons engaged in offshore petroleum operations; and

10

(ii) to report, as appropriate, to the Minister, the Commonwealth Minister, and to any responsible interstate Minister, on those investigations;

15

(e) to advise persons, either on its own initiative or on request, on occupational safety and health matters relating to offshore petroleum operations;

(f) to make reports, including recommendations, to —

20

(i) the Minister;

(ii) the Commonwealth Minister; and

(iii) any responsible interstate Minister,

on issues relating to the occupational safety and health of persons engaged in offshore petroleum operations;

25

(g) to cooperate with —

(i) the Minister and other State agencies having functions relating to offshore petroleum operations;

30

(ii) Commonwealth agencies having functions relating to offshore petroleum operations; and

(iii) the Designated Authorities under the Commonwealth Act in respect of States

other than Western Australia and the Northern Territory.

151F. Safety Authority's ordinary powers

- 5 (1) The Safety Authority has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.
- (2) The Safety Authority's powers include, but are not limited to, the following powers —
- 10 (a) the power to acquire, hold and dispose of real and personal property;
- (b) the power to enter into contracts;
- (c) the power to lease the whole or any part of any land or building for the purposes of the Safety Authority;
- 15 (d) the power to occupy, use and control any land or building owned or held under lease by the Commonwealth and made available for the purposes of the Safety Authority;
- (e) the power to conduct research and development projects and to cooperate with others in such projects;
- 20 (f) the power to apply for and hold patents and exploit patents;
- (g) the power to do anything incidental to any of its functions.
- 25

151G. Judicial notice of seal

- All courts, judges and persons acting judicially must —
- 30 (a) take judicial notice of the imprint of the seal of the Safety Authority appearing on a document; and
- (b) presume that the document was duly sealed.

Division 3 — Safety Authority Board

151H. Functions of the Board

(1) The Board has the following functions —

- 5
- (a) to give advice, and make recommendations, to the CEO about the operational policies and strategies to be followed by the Safety Authority in the performance of its functions;
 - (b) to give advice, and make recommendations, to —
 - 10 (i) the Minister;
 - (ii) the Commonwealth Minister;
 - (iii) interstate Ministers; and
 - (iv) the body known as the Ministerial Council on Mineral and Petroleum Resources,
- 15
- about either or both of the following —
- (v) policy or strategic matters relating to the occupational safety and health of persons engaged in offshore petroleum operations;
 - 20 (vi) the performance by the Safety Authority of its functions;
 - (c) any other functions specified in a written notice given by the Commonwealth Minister to the
- 25
- Chair of the Board.

(2) As soon as practicable after the Board gives advice, or makes recommendations, under subsection (1)(b) to —

- 30
- (a) the Minister;
 - (b) an interstate Minister; or
 - (c) the body known as the Ministerial Council on Mineral and Petroleum Resources,

the Board must give the Commonwealth Minister a written copy of that advice or those recommendations.

151I. Powers of the Board

5 The Board has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

151J. Validity of decisions

10 The performance of the functions, or the exercise of the powers, of the Board is not affected only because of there being a vacancy or vacancies in the membership of the Board.

Division 4 — Chief Executive Officer and staff of the Safety Authority

151K. CEO acts for Safety Authority

15 Anything done by the CEO in the name of the Safety Authority or on the Safety Authority's behalf is taken to have been done by the Safety Authority.

151L. Working with the Board

- 20 (1) The CEO must request the Board's advice on strategic matters relating to the performance of the Safety Authority's functions.
- (2) The CEO must have regard to the advice given to him or her by the Board (whether or not the advice was given in response to a request).
- 25 (3) The CEO must —
- (a) keep the Board informed of the Safety Authority's operations; and

- (b) give the Board any reports, documents and information in relation to those operations that the Chair of the Board requires.

151M. Delegation

- 5 (1) An employee of this State, or of an authority of this State, may perform any function and exercise any power delegated to him or her by the CEO under the Commonwealth Act.
- 10 (2) In performing a function or exercising a power under the delegation, the delegate must comply with any directions of the CEO.

151N. Safety Authority may use State government staff

An officer or employee —

- 15 (a) in the Public Service;
- (b) in a State agency or instrumentality; or
- (c) otherwise in the service of the Crown in right of the State,

20 may assist the Safety Authority in connection with the performance of any of the Safety Authority's functions or the exercise of any of the Safety Authority's powers under this Act, the Commonwealth Act or a corresponding law.

Division 5 — Other Safety Authority provisions

151O. Minister may require the Safety Authority to prepare reports or give information

- 25 (1) The Minister may, by written notice given to the Safety Authority, require the Safety Authority —
 - (a) to prepare a report about one or more specified matters relating to the performance of the

Safety Authority's functions or the exercise of the Safety Authority's powers; and

(b) give a copy of the report to —

(i) the Minister;

(ii) each interstate Minister; and

(iii) the Commonwealth Minister,

within the period specified in the notice.

(2) The Minister may, by written notice given to the Safety Authority, require the Safety Authority to —

(a) prepare a document setting out specified information relating to the performance of the Safety Authority's functions or the exercise of the Safety Authority's powers; and

(b) give a copy of the report to —

(i) the Minister;

(ii) each interstate Minister; and

(iii) the Commonwealth Minister,

within the period specified in the notice.

(3) The Safety Authority must comply with a requirement under subsection (1) or (2).

151P. Directions to the Safety Authority

(1) The Minister may request the Commonwealth Minister to give a direction to the Safety Authority that relates wholly or principally to the Safety Authority's operations in the adjacent area.

(2) The Commonwealth Minister must use his or her best endeavours to make a decision on the request within 30 days after receiving the request.

(3) If the Commonwealth Minister refuses the request, the Commonwealth Minister must give the Minister a written statement setting out the reasons for the refusal.

5 (4) The Safety Authority must comply with any direction given by the Commonwealth Minister under this section.

151Q. Reviews of operations of Safety Authority

10 (1) The Minister must cause reviews to be conducted of the operations of the Safety Authority in relation to the adjacent area.

(2) The Minister must cause to be prepared a report of a review under subsection (1).

15 (3) The first review is to relate to the 3 year period beginning on 1 January 2005, and is to be completed within 6 months, or the longer period that the Minister allows, after the end of that 3 year period.

20 (4) Subsequent reviews are to relate to successive 3 year periods, and must be completed within 6 months, or the longer period that the Minister allows, after the end of the 3 year period to which the review relates.

(5) A review under this section may be conducted in conjunction with a review under the Commonwealth Act or a corresponding law (or both).

25 (6) Without limiting the matters to be covered by a review under subsection (1), the review must include an assessment of the effectiveness of the Safety Authority in bringing about improvements in the occupational safety and health of persons engaged in offshore petroleum operations.

30 (7) The Minister must cause a copy of the report of a review under subsection (1) to be tabled in each House

of Parliament within 15 sitting days of that House after the report of the review is completed.

- (8) For the purposes of this section, a review is completed when the report of the review is made available to the Minister.

5

”.

45. Section 152 amended

- (1) Section 152(2) is amended as follows:

10

- (a) after paragraph (l) by deleting “and”;
(b) in paragraph (m) by deleting “area.” and inserting instead —

“

area;

15

- (n) fees in relation to offshore petroleum operations, safety audits or other services provided by the Minister;
(o) any transitional matter arising out of the amendments made to this Act by the *Petroleum Legislation Amendment and Repeal Act 2005*.

20

”.

- (2) After section 152(2b) the following subsection is inserted —

“

25

- (2c) Regulations under this section may adopt or apply, with or without modification, any regulation made under the Commonwealth Act, the *Petroleum Act 1967* or the *Petroleum Pipelines Act 1969*, that is in force or existing at the time when the regulations under this section take effect or as in force or existing from time to time.

30

”.

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**46. Various sections amended to delete “the regulations”
(Interpretation Act 1984 s. 46)**

- (1) The provisions set out in the Table to this section are amended by deleting “and the regulations” in each case.

5

Table

s. 7	s. 66
s. 28	s. 111(4)
s. 38C	s. 112(5)
s. 52	

- (2) The provisions set out in the Table to this section are amended by deleting “or the regulations” in each case.

Table

s. 10(1) (twice)	s. 131(1), (2)
s. 16(1) and (2)	s. 132
s. 61(b)	s. 136

47. Schedule 5 inserted

10

After Schedule 4 the following Schedule is inserted —

“

Schedule 5 — Occupational safety and health

[s. 151B]

Division 1 — Introduction

15

1. Objects

The objects of this Schedule are, in relation to facilities located in the adjacent area —

20

- (a) to secure the occupational safety and health of persons at or near those facilities;
- (b) to protect persons at or near those facilities from risks to occupational safety and health arising out of activities being conducted at those facilities;

- 5
- (c) to ensure that expert advice is available on occupational safety and health matters in relation to those facilities;
- (d) to promote an occupational environment for members of the workforce at those facilities that is adapted to their needs relating to safety and health; and
- 10 (e) to foster a consultative relationship between all relevant persons concerning the safety and health of members of the workforce at those facilities.

2. Simplified outline

The following is a simplified outline of this Schedule —

- 15
- This Schedule sets up a scheme to regulate occupational safety and health matters at or near facilities.
 - Occupational safety and health duties are imposed on the following —
 - 18 (a) the operator of a facility;
 - (b) a person in control of a part of a facility, or of any work carried out at a facility;
 - 20 (c) an employer;
 - (d) a manufacturer of plant, or a substance, for use at a facility;
 - (e) a supplier of a facility, or of any plant or substance for use at a facility;
 - 25 (f) a person who erects or installs a facility, or any plant at a facility;
 - (g) a person at a facility.
 - A group of members of the workforce at a facility may be established as a designated work group.
 - 30 • The members of a designated work group may select a safety and health representative for that designated work group.

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- The safety and health representative may exercise certain powers for the purpose of promoting or ensuring the occupational safety and health of group members.
- An OHS inspector may conduct an inspection —
 - 5 (a) to ascertain whether a listed OSH law is being complied with;
 - (b) concerning a contravention or a possible contravention of a listed OSH law; or
 - 10 (c) concerning an accident or dangerous occurrence that has happened at or near a facility.
- The operator of a facility must report accidents and dangerous occurrences to the Safety Authority.

3. Definitions

In this Schedule —

15 **“accident”** includes the contraction of a disease;

“associated offshore place”, in relation to a facility, means any offshore place near the facility where activities (including diving activities) relating to the construction, installation, operation, maintenance or
20 decommissioning of the facility take place, but does not include —

- (a) another facility;
- (b) a supply vessel, offtake tanker, anchor handler or tugboat; or
- 25 (c) a vessel, or structure, that is declared by the regulations not to be an associated offshore place;

“contract” includes an arrangement or understanding;

“contractor” has the meaning given by clause 7;

30 **“dangerous occurrence”** means an occurrence declared by the regulations to be a dangerous occurrence for the purposes of this definition;

“designated work group” means —

- (a) a group of members of the workforce at a facility that is established as a designated work group under clause 18 or 19; or
- 5 (b) that group as varied in accordance with clause 20 or 21;

“employee”, in relation to an employer, means an employee of that employer;

10 **“employer”** means an employer who carries on an activity at a facility;

“facility” means a facility as defined by clause 4, and —

- (a) includes a facility (as defined by clause 4) that is being constructed or installed; and
- 15 (b) except in the definition of “associated offshore place”, includes an associated offshore place in relation to a facility (as defined by clause 4);

“group member”, in relation to a designated work group at a facility, means a person who is —

- (a) a member of the workforce at that facility; and
- 20 (b) included in that designated work group;

“improvement notice” means an improvement notice issued under clause 61(1);

“inspection” means an inspection conducted under Division 4 and includes an investigation or inquiry;

25 **“member of the workforce”**, in relation to a facility, means a natural person who does work at the facility, whether —

- (a) as an employee of the operator of the facility or of another person; or
- 30 (b) as a contractor of the operator or of another person;

“operator”, in relation to a facility or proposed facility, means the person who, under the regulations, is taken to be the operator of that facility or proposed facility;

“operator’s representative” means a person present at a facility in compliance with the obligations imposed on the operator by clause 5;

“own” includes own jointly and own in part;

5 **“plant”** includes any machinery, equipment or tool, or any component;

“premises” includes the following —

- 10 (a) a structure or building;
(b) a place (whether or not enclosed or built on);
(c) a part of a thing referred to in paragraph (a) or (b);

“prohibition notice” means a prohibition notice issued under clause 59(1);

15 **“proposed facility”** means a facility proposed to be constructed, installed or operated;

“recovery”, in relation to petroleum, includes all processes directly or indirectly associated with its recovery;

“registered organisation” means an organisation —

- 20 (a) within the meaning of the *Workplace Relations Act 1996* of the Commonwealth; or
(b) as defined in section 7(1) of the *Industrial Relations Act 1979*;

“regulated business premises” means —

- 25 (a) a facility; or
(b) premises that are —
30 (i) occupied by a person who is the operator of a facility; and
(ii) used, or proposed to be used, wholly or principally in connection with an offshore petroleum operation;

“regulations” means regulations made for the purposes of this Schedule;

35 **“Tribunal”** has the meaning given to that term in the *Occupational Safety and Health Act 1984* section 51G(2);

“work” means work offshore that is directly or indirectly related to the construction, installation, operation, maintenance or decommissioning of a facility;

“workforce representative” means —

- 5 (a) in relation to a person who is a member of the workforce at a facility — a registered organisation of which that person is a member, if the person is qualified to be a member of that organisation because of the work the person performs at the facility; or
- 10 (b) in relation to a designated work group or a proposed designated work group — a registered organisation of which a person who is, or who is likely to be, in the work group is a member, if the person is qualified to be a member of that organisation because of the work the person performs, or will perform, at a facility as a member of the group;
- 15

20 **“work group employer”**, in relation to a designated work group at a facility, means an employer of one or more group members, but does not include the operator of the facility;

25 **“workplace”**, in relation to a facility, means the whole facility or any part of the facility.

4. Facilities

- (1) A vessel or structure is taken to be a facility for the purposes of this Schedule while that vessel or structure —
- 30 (a) is located at a site in the adjacent area; and
- (b) is being used, or prepared for use, at that site —
- (i) for the recovery of petroleum, for the processing of petroleum, or for the storage and offloading of petroleum, or for any combination of those activities;
- 35 (ii) for the provision of accommodation for persons working on another facility,

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- whether connected by a walkway to that other facility or not;
- 5 (iii) for drilling or servicing a well for petroleum or doing work associated with the drilling or servicing process;
- (iv) for laying pipes for petroleum, including any manufacturing of such pipes, or for doing work on an existing pipe;
- 10 (v) for the erection, dismantling or decommissioning of a vessel or structure referred to in subparagraph (i), (ii), (iii) or (iv); or
- 15 (vi) for any other purpose related to an offshore petroleum operation that is prescribed for the purposes of this subparagraph.
- (2) Subclause (1) applies to a vessel or structure —
- (a) whether it is floating or fixed; and
- (b) whether or not it is capable of independent navigation.
- 20 (3) Subclause (1) has effect subject to subclauses (6) and (7).
- (4) A vessel or structure used for a purpose referred to in subclause (1)(b)(i) includes —
- 25 (a) any wells and associated plant and equipment by means of which petroleum processed or stored at the vessel or structure is recovered;
- (b) any pipe or system of pipes through which petroleum is conveyed from a well to the vessel or structure; and
- 30 (c) any secondary line associated with the vessel or structure.
- (5) For the purposes of subclause (1), a vessel or structure that is located offshore for the purpose of laying pipes as described in subclause (1)(b)(iv) is taken to be located at a site, despite the fact that the vessel or structure moves as the pipe laying process proceeds.
- 35

- (6) Despite subclause (1), a vessel or structure is taken not to be a facility for the purposes of this Schedule if the vessel or structure is —
- (a) an offtake tanker;
 - 5 (b) a tug or an anchor handler;
 - (c) a vessel or structure used for supplying a facility or otherwise travelling between a facility and the shore; or
 - 10 (d) a vessel or structure used for any purpose such that it is declared by the regulations not to be a facility.
- (7) In determining when a vessel or structure that has the potential to be used for one or more of the purposes referred to in subclause (1)(b) is in fact being so used, the vessel or structure is taken —
- 15 (a) to commence to be so used only at the time when it arrives at the site where it is to be so used and any activities necessary to make it operational at that site are begun; and
 - 20 (b) to cease to be so used when operations cease, and the vessel or structure has been returned either to a navigable form or to a form in which it can be towed to another place.
- (8) Each of the following is taken to be a facility for the purposes of this Schedule —
- 25 (a) a pipeline subject to a pipeline licence;
 - (b) if a pipeline subject to a pipeline licence conveys petroleum recovered from a well without the petroleum having passed through another facility — that pipeline, together with —
 - 30 (i) that well and associated plant and equipment; and
 - (ii) any pipe or system of pipes through which petroleum is conveyed from that well to that pipeline.

- (9) In subclause (8)(b) —
“**facility**” does not include a pipeline.

5. Operator must ensure presence of operator’s representative

- 5 (1) The operator of a facility must ensure that, at all times when one or more natural persons are present at a facility, there is also present a natural person (the “**operator’s representative**”) who has day to day management and control of operations at the facility.
- 10 Penalty: \$5 500.
- (2) The operator of a facility must ensure that the name of the operator’s representative at the facility is displayed in a prominent place at the facility.
- 15 Penalty: \$5 500.
- (3) Subclause (1) does not imply that, if the operator is a natural person, the operator’s representative at the facility may not be, from time to time, the operator.

6. Safety and health of persons using an accommodation amenity

20 For the avoidance of doubt, a reference in this Schedule to the occupational safety and health of a person includes a reference to the safety and health of a person using an accommodation amenity provided for the accommodation of persons working on another facility.

7. Contractor

25 For the purposes of this Schedule, a natural person is taken to be a “contractor” of another person (the “**relevant person**”) if the natural person does work at a facility under a contract for services between —

- 30 (a) the relevant person; and
(b) either —
(i) the natural person; or
(ii) the employer of the natural person.

Division 2 — Occupational safety and health

Subdivision 1 — Duties relating to occupational safety and health

8. Duties of operator

- 5 (1) The operator of a facility must take all reasonably practicable steps to ensure that —
- (a) the facility is safe and without risk to the health of any person at or near the facility; and
 - (b) all work and other activities carried out on the facility are carried out in a manner that is safe and without risk to the health of any person at or near the facility.
- 10
- Penalty: \$110 000.
- 15 (2) Without limiting the generality of subclause (1), the operator of a facility must —
- (a) provide and maintain a physical environment at the facility that is safe and without risk to health;
 - (b) provide and maintain adequate amenities for the safety and health of all members of the workforce at the facility;
 - 20 (c) ensure that any plant, equipment, materials and substances at the facility are safe and without risk to health;
 - (d) implement and maintain systems of work at the facility that are safe and without risk to health;
 - 25 (e) implement and maintain appropriate procedures and equipment for the control of, and response to, emergencies at the facility;
 - 30 (f) provide all members of the workforce, in appropriate languages, with the information, instruction, training and supervision necessary for them to carry out their activities in a manner that does not adversely affect the occupational safety and health of persons at the facility;

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- 5
- (g) monitor the occupational safety and health of all members of the workforce and keep records of that monitoring;
- (h) provide appropriate medical and first aid services at the facility; and
- (i) develop, in consultation with members of the workforce and workforce representatives, a policy relating to occupational safety and health that —
- 10
- (i) will enable the operator and the members of the workforce to cooperate effectively in promoting and developing measures to ensure the occupational safety and health of persons at the facility;
- 15
- (ii) will provide adequate mechanisms for reviewing the effectiveness of the measures; and
- (iii) provides for the making of an agreement that complies with subclauses (4) and (5).
- Penalty: \$110 000.
- 20
- (3) Subclause (2)(i) does not require the operator of a facility to engage in consultations with a workforce representative unless a member of the workforce at the facility has requested the workforce representative to be involved in those consultations.
- 25
- (4) The agreement referred to in subclause (2)(i)(iii) must be between —
- (a) on the one hand — the operator; and
- (b) on the other hand —
- 30
- (i) the members of the workforce; and
- (ii) if a member of the workforce at the facility has requested a workforce representative in relation to the member to be a party to that agreement — that workforce representative.

- (5) The agreement referred to in subclause (2)(i)(iii) must provide appropriate mechanisms for continuing consultation between —
- (a) on the one hand — the operator; and
 - (b) on the other hand —
 - (i) the members of the workforce; and
 - (ii) if a member of the workforce at the facility has requested a workforce representative in relation to the member to be involved in consultations on a particular occasion — that workforce representative.
- (6) The agreement may provide for any other matters agreed between the parties to it.

9. Duties of persons in control of parts of facility or particular work

- (1) A person who is in control of any part of a facility, or of any particular work carried out at a facility, must take all reasonably practicable steps to ensure that —
- (a) that part of the facility, or the place where that work is carried out, is safe and without risk to health; and
 - (b) if the person is in control of particular work — the work is carried out in a manner that is safe and without risk to health.

Penalty: \$110 000.

- (2) Without limiting the generality of subclause (1), a person who is in control of any part of a facility, or of any particular work carried out at a facility, must —
- (a) ensure that the physical environment at that part of the facility, or at the place where the work is carried out, is safe and without risk to health;
 - (b) ensure that any plant, equipment, materials and substances at or near that part of the facility or that place, or used in that work, are safe and without risk to health;

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- (c) implement and maintain systems of work at that part of the facility, or in carrying out work at that place, that are safe and without risk to health;
- 5 (d) ensure a means of access to, and egress from, that part of the facility or that place that is safe and without risk to health; and
- 10 (e) provide all members of the workforce located at that part of the facility or engaged on that work, in appropriate languages, with the information, instruction, training and supervision necessary for them to carry out their work in a manner that is safe and without risk to health.

Penalty: \$110 000.

10. Duties of employers

- 15 (1) An employer must take all reasonably practicable steps to protect the safety and health of employees at a facility.
Penalty: \$110 000.
- (2) Without limiting the generality of subclause (1), an employer must —
 - 20 (a) provide and maintain a working environment that is safe for employees and without risk to their health;
 - (b) ensure that any plant, equipment, materials and substances used in connection with the employees' work are safe and without risk to health;
 - 25 (c) implement and maintain systems of work that are safe and without risk to health;
 - (d) provide a means of access to, and egress from, the employees' work location that is safe and without risk to health; and
 - 30 (e) provide the employees, in appropriate languages, with the information, instruction, training and supervision necessary for them to carry out their work in a manner that is safe and without risk to health.

35 Penalty: \$110 000.

- 5 (3) A person has, in respect of a contractor of that person, the same obligations that an employer has under subclauses (1) and (2) in respect of an employee of that employer, but only in relation to —
- (a) matters over which the first-mentioned person has control; or
- (b) matters over which —
- 10 (i) the first-mentioned person would have had control apart from express provision to the contrary in a contract; and
- (ii) the first-mentioned person would, in the circumstances, usually be expected to have had control.
- (4) An employer must take all reasonable steps to —
- 15 (a) monitor the safety and health of employees; and
- (b) keep records of that monitoring.

Penalty: \$110 000.

11. Duties of manufacturers in relation to plant and substances

- 20 (1) A manufacturer of any plant that the manufacturer knows or ought reasonably to expect will be used by members of the workforce at a facility must take all reasonably practicable steps —
- 25 (a) to ensure that the plant is so designed and constructed as to be, when properly used, safe and without risk to health;
- (b) to carry out, or cause to be carried out, the research, testing and examination necessary in order to discover, and to eliminate or minimise, any risk to
- 30 safety or health that may arise from the use of the plant; and

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- 5
- (c) to make available, in connection with the use of the plant at a facility, adequate written information about —
- (i) the use for which it is designed and has been tested;
- (ii) details of its design and construction; and
- (iii) any conditions necessary to ensure that, when put to the use for which it was designed and tested, it will be safe and without risk to health.
- 10

Penalty: \$22 000.

- (2) A manufacturer of any substance that the manufacturer knows or ought reasonably to expect will be used by members of the workforce at a facility must take all reasonably practicable steps —
- 15
- (a) to ensure that the substance is so manufactured as to be, when properly used, safe and without risk to health;
- (b) to carry out, or cause to be carried out, the research, testing and examination necessary to discover, and to eliminate or minimise, any risk to safety or health that may arise from the use of the substance; and
- 20
- (c) to make available, in connection with the use of the substance at a facility, adequate written information concerning —
- 25
- (i) the use for which it is manufactured and has been tested;
- (ii) details of its composition;
- (iii) any conditions necessary to ensure that, when put to the use for which it was manufactured and tested, it will be safe and without risk to health; and
- 30
- (iv) the first aid and medical procedures that should be followed if the substance causes injury.
- 35

Penalty: \$22 000.

(3) If —

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

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

(4) This clause does not affect the operation of any other law of this State that imposes an obligation on a manufacturer in respect of defective goods or in respect of information to be supplied in relation to goods.

12. Duties of suppliers of facilities, plant and substances

(1) A supplier of a facility, or of any plant or substance that the supplier ought reasonably to expect will be used by members of the workforce at a facility, must take all reasonably practicable steps —

- (a) to ensure that, at the time of supply, the facility, or the plant or substance, is in such condition as to be, when properly used, safe and without risk to health;
- (b) to carry out, or cause to be carried out, the research, testing and examination necessary to discover, and to eliminate or minimise, any risk to safety or health that may arise from the condition of the facility, plant or substance; and
- (c) to make available —
 - (i) in the case of a facility — to the operator of a facility; and
 - (ii) in the case of plant or substance — to the person to whom the plant or substance is supplied,

adequate written information, in connection with the use of the facility, plant or substance (as the case requires) about —

- (iii) the condition of the facility, plant or substance at the time of supply;

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- (iv) any risk to the safety and health of members of the workforce at the facility to which the condition of the facility, plant or substance may give rise unless it is properly used;
- 5 (v) the steps that need to be taken in order to eliminate that risk; and
- (vi) in the case of a substance — the first aid and medical procedures that should be followed if the condition of the substance causes injury to a member of the workforce at the facility.

Penalty: \$22 000.

- (2) For the purposes of subclause (1), if a person (the **“ostensible supplier”**) supplies to a person either a facility, or any plant or substance that is to be used by members of the workforce at a facility, and the ostensible supplier —
 - (a) carries on the business of financing the acquisition or the use of goods by other persons;
 - 20 (b) has, in the course of that business, acquired an interest in the facility, or in the plant or substance, from another person (the **“actual supplier”**), solely for the purpose of financing its acquisition by, or its provision to, the person to whom it is finally supplied; and
 - 25 (c) has not taken possession of the facility, plant or substance, or has taken possession of the facility, plant or substance solely for the purpose of passing possession of the facility, plant or substance to the person to whom it is finally supplied,

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

- 35 (3) This clause does not affect the operation of any other law of this State that imposes an obligation in respect of the sale or

supply of goods or in respect of the information to be
supplied in relation to goods.

13. Duties of persons erecting facilities or installing plant

- 5 (1) A person who erects or installs a facility, or erects or installs
any plant at a facility, must take all reasonably practicable
steps to ensure that the facility or plant is not erected or
installed in such a way that it is unsafe or constitutes a risk
to health.

Penalty: \$22 000.

- 10 (2) This clause does not affect the operation of any other law of
this State that imposes an obligation in respect of the
erection or installation of structures or goods or the supply
of services.

14. Duties of persons in relation to occupational safety and health

- 15 (1) A person at a facility must, at all times, take all reasonably
practicable steps —
- 20 (a) to ensure that the person does not take any action,
or make any omission, that creates a risk, or
increases an existing risk, to the occupational safety
and health of that person or of any other person at
or near the facility;
- 25 (b) in respect of any obligation imposed on the operator
or on any other person under a listed OSH law — to
cooperate with the operator or that other person to
the extent necessary to enable the operator or that
other person to fulfil that obligation; and
- (c) to use equipment that is —
- 30 (i) supplied to the person by the operator, an
employer of the person or any other person
having control of work at a facility
(the “**equipment supplier**”); and
- 35 (ii) necessary to protect the occupational safety
and health of the person, or of any other
person at or near the facility,

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in accordance with any instructions given by the equipment supplier, consistent with the safe and proper use of the equipment.

Penalty: \$5 500.

- 5 (2) Despite subclause (1), the choice or manner of use, or
choice and manner of use, of equipment of the kind referred
to in subclause (1)(c)(ii) is a matter that may be, consistently
with each listed OSH law —
- 10 (a) agreed on between the equipment supplier and any
relevant safety and health representative; or
- (b) agreed on by a safety and health committee.
- 15 (3) If an agreement of the kind referred to in subclause (2)(a) or
(b) provides a process for choosing equipment of a
particular kind that is to be provided by the equipment
supplier, action must not be taken against a person for
failure to use equipment of that kind that is so provided
unless the equipment has been chosen in accordance with
that process.
- 20 (4) If an agreement of the kind referred to in subclause (2)(a) or
(b) provides a process for determining the manner of use of
equipment of a particular kind, action must not be taken
against a person for failure to use, in the manner required by
the equipment supplier, equipment of that kind that is so
25 provided unless the manner has been determined in
accordance with that process.

15. Reliance on information supplied or results of research

- 30 (1) For the purpose of the application of clause 8, 9 or 10 to the
use of plant or a substance, a person on whom an obligation
is imposed under any of those clauses is regarded as having
taken reasonably practicable steps as required by the
relevant clause, in relation to the use of the plant or
substance, to the extent that —
- 35 (a) the person ensured, so far as practicable, that its use
was in accordance with the information supplied by
the manufacturer or the supplier of the plant or

substance relating to occupational safety and health
in its use; and

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

5 (2) For the purpose of the application of clause 11 or 12 to
carrying out research, testing and examining a facility, or
any plant or substance, a person on whom an obligation is
imposed under either of those clauses is regarded as having
10 taken reasonably practicable steps as required by the
relevant clause, in relation to carrying out research, testing
and examining the facility, plant or substance, to the extent
that —

(a) the research, testing or examination has already
15 been carried out by or on behalf of someone else;
and

(b) it was reasonable for the person to rely on that
research, testing or examination.

(3) For the purpose of the application of clause 13 to the
20 erection of a facility or the erection or installation of plant at
a facility, a person on whom an obligation is imposed under
that clause is regarded as having taken reasonably
practicable steps as required by that clause to the extent
that —

(a) the person ensured, so far as is reasonably
25 practicable, that the erection of the facility, or the
erection or installation of the plant, was —

(i) in accordance with information supplied by
30 the manufacturer or supplier of the facility
or plant relating to its erection or its
installation; and

(ii) consistent with the occupational safety and
health of persons at the facility;

and

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

- (4) Nothing in this clause limits the generality of what constitutes reasonably practicable steps as required by clause 8, 9, 10, 11, 12 or 13.

Subdivision 2 — Regulations relating to occupational safety and health

5

16. Regulations relating to occupational safety and health

- (1) The regulations may make provision relating to any matter affecting, or likely to affect, the occupational safety and health of persons at a facility.
- 10 (2) Regulations made for the purposes of subclause (1) may make provision for any or all of the following —
- (a) prohibiting or restricting the performance of all work or specified work at a facility;
 - 15 (b) prohibiting or restricting the use of all plant or specified plant at a facility;
 - (c) prohibiting or restricting the carrying out of all processes or a specified process at a facility;
 - (d) prohibiting or restricting the storage or use of all substances or specified substances at a facility;
 - 20 (e) specifying the form in which information required to be made available under clause 11(1)(c) or 12(1)(c) is to be so made available;
 - (f) prohibiting, except in accordance with licences granted under the regulations, the use of specified
25 plant or specified substances at a facility;
 - (g) providing for —
 - (i) the issue, variation, renewal, transfer, suspension and cancellation of those
licences; and
 - 30 (ii) the conditions to which the licences may be subject;
 - (h) regulating the maintenance and testing of plant used at a facility;
 - 35 (i) regulating the labelling or marking of substances used at a facility;

- 5
- (j) regulating the transport of specified plant or specified substances for use at a facility;
- (k) prohibiting the performance, at a facility, of specified activities or work except —
- (i) by persons who satisfy requirements of the regulations as to qualifications, training or experience; or
- (ii) under the supervision specified in the regulations;
- 10
- (l) requiring specified action to avoid accidents or dangerous occurrences;
- (m) providing for, or prohibiting, specified action in the event of accidents or dangerous occurrences;
- 15
- (n) providing for the employment at a facility of persons to perform specified duties relating to the maintenance of occupational safety and health at the facility;
- 20
- (o) regulating the provision and use, at a facility, of protective clothing and equipment, safety equipment and rescue equipment;
- (p) providing for monitoring the health of members of the workforce at a facility and the conditions at the facility;
- 25
- (q) requiring employers to keep records of matters related to the occupational safety and health of employees;
- (r) providing for the provision of first aid equipment and amenities at a facility.

Division 3 — Workplace arrangements

30

Subdivision 1 — Introduction

17. Simplified outline

The following is a simplified outline of this Subdivision —

- A group of members of the workforce at a facility may be established as a designated work group.

- The members of a designated work group may select a safety and health representative for that designated work group.
- 5 • The safety and health representative may exercise certain powers for the purpose of promoting or ensuring the occupational safety and health of group members.
- A safety and health committee may be established in relation to the members of the workforce at a facility.
- 10 • The main function of a safety and health committee is to assist the operator in relation to occupational safety and health matters.

Subdivision 2 — Designated work groups

18. Establishment of designated work groups by request

- 15 (1) A request to the operator of a facility to enter into consultations to establish designated work groups in relation to the members of the workforce at the facility may be made by —
 - (a) any member of the workforce; or
 - 20 (b) if a member of the workforce requests a workforce representative in relation to the member to make the request to the operator — that workforce representative.
- 25 (2) The operator of a facility must, within 14 days after receiving a request under subclause (1), enter into consultations with —
 - (a) if any member of the workforce made a request to establish designated work groups —
 - (i) that member of the workforce;
 - 30 (ii) if that member requests that the operator enter into consultations with a workforce representative in relation to the member — that workforce representative; and
 - (iii) each employer (if any) of members of the workforce;

and

- (b) if a workforce representative made a request to establish designated work groups —
 - (i) if a member of the workforce requests that the operator enter into consultations with that workforce representative — that workforce representative; and
 - (ii) each employer of members of the workforce.

5

10

- (3) Within 14 days after the completion of consultations about the establishment of the designated work groups, the operator must, by notifying the members of the workforce, establish the designated work groups in accordance with the outcome of the consultations.

15

19. Establishment of designated work groups at initiative of operator

- (1) If, at any time, the operator of a facility considers that designated work groups should be established, the operator must enter into consultations with —
 - (a) all members of the workforce;
 - (b) if a member of the workforce requests that the operator enter into consultations with a workforce representative in relation to the member — that workforce representative; and
 - (c) each employer (if any) of members of the workforce.

20

25

- (2) Within 14 days after the completion of consultations about the establishment of the designated work groups, the operator must, by notifying the members of the workforce, establish the designated work groups in accordance with the outcome of the consultations.

30

20. Variation of designated work groups by request

- (1) A request to the operator of a facility to enter into consultations to vary designated work groups that have

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already been established in relation to the members of the workforce at the facility may be made by —

- (a) any member of the workforce; or
 - (b) if a member of the workforce requests a workforce representative in relation to the member to make the request to the operator — that workforce representative.
- 5
- (2) The operator of a facility must, within 14 days after receiving a request under subclause (1), enter into consultations with —
- 10
- (a) if any member of the workforce made a request to vary designated work groups —
 - (i) that member of the workforce;
 - (ii) the safety and health representative of each designated work group affected by the proposed variation; and
 - (iii) each work group employer (if any) in relation to each designated work group affected by the proposed variation;
- 15
- and
- 20
- (b) if a workforce representative made a request to vary designated work groups —
 - (i) if a member of a designated work group affected by the proposed variation requests that the operator enter into consultations with that workforce representative in relation to the group — that workforce representative;
 - (ii) the safety and health representative of each designated work group affected by the proposed variation; and
 - (iii) each work group employer (if any) in relation to each designated work group affected by the proposed variation.
- 25
- 30

(3) If —

(a) consultations take place about the variation of designated work groups that have already been established; and

5

(b) as a result of the consultations, it has been determined that the variation of some or all of those designated work groups is justified,

10

then, within 14 days after the completion of the consultations, the operator must, by notifying the members of the workforce who are affected by the variation, vary the designated work groups in accordance with the outcome of the consultations.

21. Variation of designated work groups at initiative of operator

15

(1) If the operator of a facility believes the designated work groups should be varied, the operator may, at any time, enter into consultations about the variations with —

20

(a) the safety and health representative of each of the designated work groups affected by the proposed variation;

25

(b) if a member of a designated work group affected by the proposed variation requests that the operator enter into consultations with that workforce representative in relation to the group — that workforce representative; and

(c) each work group employer (if any) in relation to each designated work group affected by the proposed variation.

30

(2) If —

(a) consultations take place about the variation of designated work groups that have already been established; and

- (b) as a result of the consultations, it has been determined that the variation of some or all of those designated work groups is justified,

5 then, within 14 days after the completion of the consultations, the operator must, by notifying the members of the workforce who are affected by the variation, vary the designated work groups in accordance with the outcome of the consultations.

22. Referral of disagreement to reviewing authority

- 10 (1) If, in the course of consultations under clause 18, 19, 20 or 21, there is a disagreement between any of the parties to the consultation about the manner of establishing or varying a designated work group, any party may, for the purpose of facilitating that consultation, refer the matter of
15 disagreement to the reviewing authority.
- (2) The party referring the matter to the reviewing authority must give notice of the referral to all the other parties to the disagreement.
- (3) The reviewing authority is to —
20 (a) resolve the matter of the disagreement referred to the reviewing authority; and
(b) notify all parties to the disagreement of the decision.
- 25 (4) If the matter of a disagreement is referred to the reviewing authority, the parties to the disagreement must complete the consultation in accordance with the resolution of that matter by the reviewing authority.
- (5) In this clause —
30 **“reviewing authority”** means a person prescribed by the regulations to be a reviewing authority for the purposes of this clause.

23. Manner of grouping members of the workforce

- 5
- (1) Consultations about the establishment or variation of a designated work group must be directed principally at the determination of the manner of grouping members of the workforce —
- (a) that best and most conveniently enables their interests relating to occupational safety and health to be represented and safeguarded; and
- 10 (b) that best takes account of the need for any safety and health representative selected for that designated work group to be accessible to each group member.
- (2) The parties to the consultations must have regard, in particular, to —
- 15 (a) the number of members of the workforce at the facility to which the consultation relates;
- (b) the nature of each type of work performed by those members;
- 20 (c) the number and grouping of those members who perform the same or similar types of work;
- (d) the workplaces where each type of work is performed;
- (e) the nature of any risks to safety and health at each of those workplaces; and
- 25 (f) any overtime or shift working arrangement at the facility.
- (3) The designated work groups must be established or varied in such a way that, so far as practicable, each of the members of the workforce at a facility is in a designated work group.
- 30 (4) All the members of the workforce at a facility may be in one designated work group.

Subdivision 3 — Safety and health representatives

24. Selection of safety and health representatives

- 5
- (1) One safety and health representative may be selected for each designated work group.
- (2) A person is not eligible for selection as the safety and health representative for a designated work group unless the person is a member of the workforce included in the group.
- (3) A person is taken to have been selected as the safety and health representative for a designated work group if —
- 10 (a) all the members of the workforce in the group unanimously agree to the selection; or
- (b) the person is elected as the safety and health representative of the group in accordance with clause 25.

15 **25. Election of safety and health representatives**

- (1) If —
- (a) there is a vacancy in the office of safety and health representative for a designated work group; and
- 20 (b) within a reasonable time after the vacancy occurs, a person has not been selected under clause 24(3)(a),
- the operator of the facility must invite nominations from all group members for election as the safety and health representative of the group.
- 25 (2) If the office of safety and health representative is vacant and the operator has not invited nominations within a further reasonable time that is no later than 6 months after the vacancy occurred, the Safety Authority may direct the operator to do so.
- 30 (3) If there is more than one candidate for election at the close of the nomination period, the operator must conduct, or arrange for the conduct of, an election at the operator's expense.

- 5
- (4) An election conducted or arranged to be conducted under subclause (3) must be conducted in accordance with regulations made for the purposes of this subclause if this is requested by the lesser of —
- (a) 100 members of the workforce normally in the designated work group; or
- (b) a majority of the members of the workforce normally in the designated work group.
- 10
- (5) If there is only one candidate for election at the close of the nomination period, that person is taken to have been elected.
- (6) A person cannot be a candidate in the election if he or she is disqualified under clause 31.
- (7) All the members of the workforce in the designated work group are entitled to vote in the election.
- 15
- (8) An operator conducting or arranging for the conduct of an election under this clause must comply with any relevant directions issued by the Safety Authority.

26. List of safety and health representatives

The operator of a facility must —

- 20
- (a) prepare and keep up to date a list of all the safety and health representatives of designated work groups comprising members of the workforce performing work at the facility; and
- 25
- (b) ensure that the list is available for inspection, at all reasonable times, by —
- (i) the members of the workforce at the facility; and
- (ii) OHS inspectors.

27. Members of designated work group must be notified of selection etc. of safety and health representative

30

The operator of a facility must —

- (a) notify members of a designated work group in relation to the facility of a vacancy in the office of

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safety and health representative for the designated work group within a reasonable time after the vacancy arises; and

- 5 (b) notify those members of the name of any person selected (whether under clause 24(3)(a) or (b)) as safety and health representative for the designated work group within a reasonable time after the selection is made.

28. Term of office

- 10 (1) A safety and health representative for a designated work group holds office —
- (a) if, in consultations that took place under clause 18, 19, 20 or 21, the parties to the consultations agreed to the period for which the safety and health representative for the group was to hold office —
- 15 for that period; or
- (b) if paragraph (a) does not apply — for 2 years.
- (2) The term of office of a safety and health representative begins at the start of the day on which he or she was
- 20 selected.
- (3) Nothing in this clause prevents a safety and health representative from being selected for further terms of office.

29. Training of safety and health representatives

- 25 (1) A safety and health representative for a designated work group must undertake a course of training relating to occupational safety and health that is accredited by the Safety Authority for the purposes of this clause.
- (2) The operator of the facility concerned must permit the representative to take any time off work, without loss of remuneration or other entitlements, that is necessary to undertake the training.
- 30 (3) If a person other than the operator is the employer of the representative, that person must permit the representative to

take any time off work, without loss of remuneration or other entitlements, that is necessary to undertake the training.

30. Resignation etc. of safety and health representatives

- 5 (1) A person ceases to be the safety and health representative for the designated work group if —
- (a) the person resigns as the safety and health representative;
 - 10 (b) the person ceases to be a group member of that designated work group;
 - (c) the person's term of office expires without the person having been selected, under clause 24, to be the safety and health representative for the designated work group for a further term; or
 - 15 (d) the person is disqualified under clause 31.
- (2) A person may resign as the safety and health representative for a designated work group by notice in writing delivered to the operator and to each work group employer.
- 20 (3) If a person resigns as the safety and health representative for a designated work group, the person must notify the resignation to the group members.
- (4) If a person has ceased to be the safety and health representative for a designated work group because of subclause (1)(b), the person must notify in writing —
- 25 (a) the group members; and
 - (b) the operator and each work group employer,
- that the person has ceased to be the safety and health representative for that designated work group.

31. Disqualification of safety and health representatives

- 30 (1) An application for the disqualification of a safety and health representative for a designated work group may be made to the Tribunal by —
- (a) the operator;

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- (b) a work group employer; or
 - (c) at the request of a group member of the designated work group — a workforce representative in relation to the designated work group.
- 5 (2) An application under subclause (1) may be made on either or both of the following grounds —
 - 10 (a) that action taken by the representative in the exercise or purported exercise of a power under clause 33(1) or any other provision of this Schedule was taken —
 - 15 (i) with the intention of causing harm to the operator or work group employer or to an undertaking of the operator or work group employer; or
 - 20 (ii) unreasonably, capriciously or not for the purpose for which the power was conferred on the representative;
 - (b) that the representative has intentionally used, or disclosed to another person, for a purpose that is not connected with the exercise of a power of a safety and health representative, information acquired from the operator or work group employer.
- 25 (3) On an application under subclause (1), the Tribunal may disqualify the representative, for a specified period not exceeding 5 years, from being a safety and health representative for any designated work group, if the Tribunal is satisfied that the representative has acted in a manner referred to in subclause (2).
- 30 (4) In making a decision under subclause (3), the Tribunal must have regard to —
 - 35 (a) the harm (if any) that was caused to the operator or work group employer or to an undertaking of the operator or work group employer as a result of the action of the representative;
 - (b) the past record of the representative in exercising the powers of a safety and health representative;

- (c) the effect (if any) on the public interest of the action of the representative; and
- (d) any other matters the Tribunal thinks relevant.

32. Deputy safety and health representatives

- 5 (1) One deputy safety and health representative may be selected for each designated work group for which a safety and health representative has been selected.
- 10 (2) A deputy safety and health representative is to be selected in the same way as a safety and health representative under clause 24.
- 15 (3) If the safety and health representative for a designated work group —
 - (a) ceases to be the safety and health representative; or
 - (b) is unable (because of absence or for any other reason) to exercise the powers of a safety and health representative,then —
 - 20 (c) the powers may be exercised by the deputy safety and health representative (if any) for the group; and
 - (d) this Schedule (other than this clause) applies in relation to the deputy safety and health representative accordingly.

33. Powers of safety and health representatives

- 25 (1) A safety and health representative for a designated work group may, for the purpose of promoting or ensuring the safety and health at a workplace of the group members —
 - 30 (a) do all or any of the following —
 - (i) inspect the whole or any part of the workplace if there has, in the immediate past, been an accident or a dangerous occurrence at the workplace, or if there is an immediate threat of such an accident or dangerous occurrence;

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- 5
- (ii) inspect the whole or any part of the workplace if the safety and health representative has given reasonable notice of the inspection to the operator's representative at the facility and to any other person having immediate control of the workplace;
- 10
- (iii) make a request to an OHS inspector or to the Safety Authority that an inspection be conducted at the workplace;
- 15
- (iv) accompany an OHS inspector during any inspection at the workplace by the OHS inspector (whether or not the inspection is being conducted as a result of a request made by the safety and health representative);
- 20
- (v) if there is no safety and health committee in respect of the members of the workforce at the facility — represent group members in consultations with the operator and any work group employer about the development, implementation and review of measures to ensure the safety and health of those members at the workplace;
- 25
- (vi) if a safety and health committee has been established in respect of the members of the workforce at the facility — examine any of the records of that committee;
- 30
- (b) investigate complaints made by any group member to the safety and health representative about the safety and health of any of the members of the workforce (whether in the group or not);
- 35
- (c) with the consent of a group member, be present at any interview about safety and health at work between that member and —
- (i) an OHS inspector;
- (ii) the operator or a person representing the operator; or

- (iii) a work group employer or a person representing that employer;
- (d) obtain access to any information under the control of the operator or any work group employer —
- 5 (i) relating to risks to the safety and health of any group member; and
- (ii) relating to the safety and health of any group member;
- and
- 10 (e) issue provisional improvement notices in accordance with clause 37.
- (2) Subclause (1)(d)(ii) has effect subject to clause 35.

34. Assistance by consultant

- 15 (1) A safety and health representative for a designated work group is entitled, in the exercise of his or her powers, to be assisted by a consultant.
- (2) A safety and health representative for a designated work group may —
- 20 (a) be assisted by a consultant at a workplace at which work is performed; or
- (b) provide to a consultant information that has been provided to the safety and health representative by a group member under clause 33(1)(d),
- 25 only if the operator or the Safety Authority has, in writing, agreed to the provision of that assistance at that workplace or the provision of that information, as the case may be.
- (3) Neither the operator nor any workplace employer becomes, because of the agreement under subclause (2) to the provision of assistance by a consultant, liable for any remuneration or other expenses incurred in connection with
- 30 the consultant's activities.
- (4) If a safety and health representative for a designated work group is being assisted by a consultant, the consultant is entitled to be present with the representative at any

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interview, about safety and health at work, between a group member and —

- (a) an OHS inspector; or
- (b) the operator or any work group employer or a person representing the operator or that employer,

5

if, and only if, the group member consents to the presence of the consultant.

35. Information

(1) Neither —

10

- (a) a safety and health representative; nor
- (b) a consultant assisting a safety and health representative,

is entitled, under clause 33(1)(d)(ii), to have access to information in respect of which a group member is entitled to claim, and does claim, legal professional privilege.

15

(2) Neither —

- (a) a safety and health representative; nor
- (b) a consultant assisting a safety and health representative,

is entitled, under clause 33(1)(d)(ii), to have access to information of a confidential medical nature relating to a person who is or was a group member unless —

20

- (c) the person has delivered to the operator or any work group employer a written authority permitting the safety and health representative, or the safety and health representative and the consultant, as the case requires, to have access to the information; or

25

- (d) the information is in a form that does not identify the person or enable the identity of the person to be discovered.

30

36. Obligations and liabilities of safety and health representatives

This Schedule does not —

- 5
- (a) impose an obligation on a person to exercise any power conferred on the person because the person is a safety and health representative; or
 - (b) render a person liable in civil proceedings because of —
 - 10 (i) a failure to exercise such a power; or
 - (ii) the way such a power was exercised.

37. Provisional improvement notices

(1) If —

- 15
- (a) a safety and health representative for a designated work group believes, on reasonable grounds, that a person —
 - (i) is contravening a listed OSH law; or
 - (ii) has contravened a provision of a listed OSH law and is likely to contravene that provision again;
- 20 and
- (b) the contravention affects or may affect one or more group members,

25 the representative must consult with the person supervising the relevant activity in an attempt to reach agreement on rectifying the contravention or preventing the likely contravention.

- 30
- (2) If, in the safety and health representative's opinion, agreement is not reached within a reasonable time, the safety and health representative may issue a provisional improvement notice to any or each person (a **“responsible person”**) responsible for the contravention.
 - (3) If a responsible person is the operator, the improvement notice may be issued to the operator by giving it to the operator's representative at the facility.

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- (4) If it is not practicable to issue the notice to a responsible person (other than the operator or the supervisor) by giving it to that responsible person —
- 5 (a) the notice may be issued to that responsible person by giving it to the person who for the time being is, or may reasonably be presumed to be, on behalf of the responsible person, in charge of the activity to which the notice relates; and
- 10 (b) if the notice is so issued, a copy of the notice must be given to the responsible person as soon as practicable afterwards.
- (5) The notice must —
- 15 (a) specify the contravention that, in the safety and health representative's opinion, is occurring or is likely to occur, and set out the reasons for that opinion; and
- (b) specify a period that —
- 20 (i) is not less than 7 days beginning on the day after the notice is issued; and
- (ii) is, in the representative's opinion, reasonable,
- within which the responsible person is to take action necessary to prevent any further contravention or to prevent the likely contravention, as the case may be.
- 25 (6) The notice may specify action that the responsible person is to take during the period specified in the notice.
- (7) If, in the safety and health representative's opinion, it is appropriate to do so, the representative may, in writing and before the end of the period, extend the period specified in the notice.
- 30 (8) On issuing the notice, the safety and health representative must give a copy of the notice to —
- (a) if the operator is not a responsible person — the operator;

- 5
- (b) each work group employer other than a work group employer who is a responsible person;
 - (c) if the supervisor is not a responsible person — the supervisor; and
 - (d) if the notice relates to any plant, substance or thing that is owned by a person other than a responsible person or a person to whom a copy of the notice is given under paragraph (a), (b) or (c) — that owner.

38. Effect of provisional improvement notice

- 10
- (1) Within 7 days after a notice is issued under clause 37 —
- (a) the responsible person; or
 - (b) any other person, to whom a copy of the notice has been given under clause 37(8),
- 15
- may request the Safety Authority or an OHS inspector for an inspection of the matter to be conducted.
- (2) On the request being made, the operation of the notice is suspended pending the determination of the matter by an OHS inspector.
- 20
- (3) As soon as possible after a request is made, an inspection must be conducted of the work that is the subject of the disagreement, and the OHS inspector conducting the inspection must —
- (a) confirm, vary or cancel the notice and notify the responsible person and any person to whom a copy of the notice has been given under clause 37(8) accordingly; and
 - (b) make decisions, and exercise powers, under Division 4, as the OHS inspector considers necessary in relation to the work.
- 25
- 30
- (4) If the OHS inspector varies a notice, the notice as so varied has effect —
- (a) so far as the notice concerns obligations imposed on the responsible person that are unaffected by the

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- variation — as if the notice as so varied resumed effect on the day of the variation; and
- 5 (b) so far as the notice concerns new obligations imposed by virtue of the variation — as if the notice as so varied were a new notice issued on the day of the variation.
- (5) If the notice is issued to a responsible person, the responsible person must —
- 10 (a) notify each group member who is affected by the notice of the fact of the issue of the notice; and
- (b) until the notice ceases to have effect, cause a copy of the notice to be displayed at or near each workplace at which the work that is the subject of the notice is being performed.
- 15 (6) The notice ceases to have effect if —
- (a) it is cancelled by an OHS inspector or by the safety and health representative; or
- 20 (b) the responsible person —
- (i) takes the action, if any, specified in the notice; or
- (ii) if no action is so specified — takes the action necessary to prevent the further contravention, or likely contravention, concerned.
- 25 (7) The responsible person —
- (a) must ensure that, to the extent that the notice relates to any matter over which the person has control, the notice is complied with; and
- 30 (b) must take reasonable steps to inform the safety and health representative who issued the notice of the action taken to comply with the notice.
- 35 (8) For the purposes of clause 65, if the OHS inspector confirms or varies the notice, the OHS inspector is taken to have decided, under clause 61, to issue an improvement notice in those terms.

39. Duties of the operator and other employers in relation to safety and health representatives

- 5 (1) The operator of a facility, in relation to which a designated work group having a safety and health representative has been established, must —
- 10 (a) on being requested to do so by the representative, consult with the representative on the implementation of changes at any workplace at which some or all of the group members perform work, being changes that may affect their safety and health;
- 15 (b) in relation to a workplace at which some or all of the group members perform work —
- 20 (i) permit the representative to make any inspection of the workplace that the representative is entitled to make in accordance with clause 33(1)(a)(i) and to accompany an OHS inspector during an inspection at the workplace by the OHS inspector; and
- 25 (ii) if there is no safety and health committee in respect of the members of the workforce — on being requested to do so by the representative, consult with the representative about the development, implementation and review of measures to ensure the safety and health of group members;
- 30 (c) permit the representative to be present at any interview at which the representative is entitled to be present under clause 33(1)(c);
- 35 (d) provide to the representative access to any information to which the representative is entitled to obtain access under clause 33(1)(d)(i) or (ii) and to which access has been requested;
- (e) permit the representative to take any time off work, without loss of remuneration or other entitlements,

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that is necessary to exercise the powers of a safety and health representative; and

(f) provide the representative with access to any amenities that are —

5

(i) prescribed for the purposes of this paragraph; or

(ii) necessary for the purposes of exercising the powers of a safety and health representative.

10

(2) Subclause (1)(d) has effect subject to subclauses (3) and (4).

(3) The operator must not permit a safety and health representative in relation to a designated work group to have access to information that —

15

(a) is of a confidential medical nature under the control of the operator; and

(b) relates to a person who is or was a group member,

unless —

20

(c) the person has delivered to the employer a written authority permitting the representative to have access to the information; or

(d) the information is in a form that does not identify the person or enable the identity of the person to be discovered.

25

(4) The operator is not required to give a safety and health representative access to any information in respect of which the operator is entitled to claim, and does claim, legal professional privilege.

30

(5) The duties imposed by this clause on the operator in respect of the safety and health representative for a designated work group apply equally, to the extent that the matters to which the duties relate are within the control of a work group employer or of a supervisor of particular work, to that employer and to that supervisor.

Subdivision 4 — Safety and health committees

40. Safety and health committees

- (1) A safety and health committee must be established in relation to the members of the workforce at a facility if —
- 5 (a) the number of those members normally present at the facility is not less than 50 (whether or not those members are all at work at the facility at the same time);
- 10 (b) the members of the workforce are included in one or more designated work groups; and
- (c) the operator is requested to establish the committee by the safety and health representative for the designated work group or for one of the designated work groups.
- 15 (2) The safety and health committee consists of —
- (a) the number of members specified in an agreement reached between the operator and the members of the workforce; or
- 20 (b) if there is no such agreement — an equal number of —
- (i) members, chosen by the members of the workforce, to represent the interests of members of the workforce; and
- 25 (ii) members, chosen by the operator, to represent the interests of the operator and the employer (other than the operator) of members of the workforce.
- (3) The agreement referred to in subclause (2)(a) may —
- 30 (a) specify the persons who are to be members to represent the interests of the operator and employers (other than the operator) of members of the workforce; and
- (b) provide for the way in which persons who are to be members to represent the interests of members of the workforce are to be chosen.
- 35

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- 5 (4) If regulations made for the purposes of this clause specify procedures for the selection of persons as members of safety and health committees to represent the interests of members of the workforce, an agreement referred to in subclause (2)(a) must not provide for members to be chosen in a way inconsistent with the regulations.
- (5) A safety and health committee must hold a meeting at least once every 3 months.
- 10 (6) The procedure at meetings of a safety and health committee must, except to the extent provided for by the regulations, be the procedure agreed upon by the committee.
- (7) A safety and health committee must cause minutes of its meetings to be kept, and must retain those minutes for a period of not less than 3 years.
- 15 (8) This clause does not prevent an operator from establishing, in consultation with registered unions or any other persons, committees concerned with occupational safety and health in relation to undertakings carried on by the operator.

41. Functions of safety and health committees

- 20 (1) A safety and health committee has the following functions —
- (a) to assist the operator of the facility concerned —
- 25 (i) to develop and implement measures designed to protect; and
- (ii) to review and update measures used to protect,
- the safety and health at work of members of the workforce;
- 30 (b) to facilitate cooperation between the operator of the facility, employers (other than the operator) of members of the workforce, and members of the workforce, in relation to occupational safety and health matters;
- 35 (c) to assist the operator to disseminate among members of the workforce, in appropriate

languages, information relating to safety and health at work;

(d) any prescribed functions;

(e) any other functions that are agreed between the operator and the safety and health committee.

(2) A safety and health committee has power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions.

(3) This Schedule does not —

(a) impose an obligation on a person to do any act, because the person is a member of a safety and health committee, in connection with the performance of a function conferred on the committee; or

(b) render such a person liable in civil proceedings because of —

(i) a failure to do such an act; or

(ii) the manner in which such an act was done.

42. Duties of the operator and other employers in relation to safety and health committees

(1) If there is a safety and health committee, the operator and any employer (other than the operator) of a member of the workforce must —

(a) make available to the committee any information possessed by the operator or that employer relating to risks to safety and health to members of the workforce; and

(b) permit any member of the committee who is a member of the workforce to take time off work, without loss of remuneration or other entitlements, as is necessary for the member adequately to participate in the performance by the committee of its functions.

(2) Subclause (1)(a) has effect subject to subclauses (3) and (4).

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- 5
- (3) The operator or any employer (other than the operator) of a member of the workforce must not make available to a safety and health committee information of a confidential nature relating to a person who is or was a member of the workforce, unless —
- (a) the person has authorised the information to be made available to the committee; or
- (b) the information is in a form that does not identify the person or enable the identity of the person to be discovered.
- 10
- (4) The operator or any employer (other than the operator) of a member of the workforce is not required to make available to a safety and health committee any information in respect of which the operator or employer is entitled to claim, and does claim, legal professional privilege.
- 15

Subdivision 5 — Emergency procedures

43. Action by safety and health representatives

- 20
- (1) If a safety and health representative for a designated work group has reasonable cause to believe that there is an imminent and serious danger to the safety or health of any person at or near the facility unless a group member or group members cease to perform particular work, the representative must —
- 25
- (a) inform a person (a “supervisor”) supervising the group member or group members in the performance of the work of the danger; or
- (b) if no supervisor can be contacted immediately —
- 30
- (i) direct the group member or group members to cease, in a safe manner, to perform the work; and
- (ii) as soon as practicable, inform a supervisor that the direction has been given.
- 35
- (2) If a supervisor is informed under subclause (1)(a) of a danger to the safety or health of any person at or near the facility, the supervisor must take the action he or she thinks

appropriate to remove that danger, which may include directing a group member or group members to cease, in a safe manner, to perform the work.

(3) If —

- 5 (a) a safety and health representative has informed a supervisor under subclause (1)(a) of a danger; and
- (b) the representative has reasonable cause to believe that, despite any action taken by the supervisor in accordance with subclause (2), there continues to be an imminent and serious danger to the safety or health of any person at or near the facility unless the group member or group members cease to perform particular work,
- 10

the representative must —

- 15 (c) direct the group member or group members to cease, in a safe manner, to perform the work; and
- (d) as soon as practicable, inform the supervisor that the direction has been given.

(4) If —

- 20 (a) a safety and health representative gives a direction under subclause (1)(b), but is unable to agree with a supervisor whom the representative has informed under that subclause that there is a need for a direction under that subclause; or
- 25 (b) a safety and health representative gives a direction under subclause (3)(c),

the representative or the supervisor may request the Safety Authority or an OHS inspector that an inspection be conducted of the work that is the subject of the direction.

- 30 (5) As soon as possible after a request is made, an inspection must be conducted of the work that is the subject of the direction, and the OHS inspector conducting the inspection must make decisions, and exercise powers, under Division 4 as the OHS inspector considers necessary in relation to the work.
- 35

- (6) This clause does not limit the power of a safety and health representative under clause 33(1)(a)(iii) to request an OHS inspector or the Safety Authority that an inspection be conducted at the workplace.

5 **44. Directions to perform other work**

If —

- 10 (a) a group member who is an employee has ceased to perform work, in accordance with the direction of a safety and health representative under clause 43(1)(b) or (3)(c); and
- 15 (b) the cessation of work does not continue after —
- (i) the safety and health representative has agreed with a person supervising work at the workplace where the work was being performed that the cessation of work was not, or is no longer, necessary; or
- (ii) an OHS inspector has, under clause 43(5), made a decision to the effect that the employee should perform the work,

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

Subdivision 6 — Exemptions

25 **45. Exemptions**

- (1) The Safety Authority may, in accordance with the regulations, make a written order exempting a specified person or class of person from any or all of the provisions of this Division (other than this clause).
- 30 (2) The Safety Authority must not make an order under subclause (1) unless it is satisfied on reasonable grounds that it is impracticable for the person to comply with the provision or provisions.

Division 4 — Inspections

Subdivision 1 — Introduction

46. Simplified outline

The following is a simplified outline of this Division:

- 5
- An OHS inspector may conduct an inspection —
 - (a) to ascertain whether a listed OSH law is being complied with;
 - (b) concerning a contravention or a possible contravention of a listed OSH law; or
 - 10 (c) concerning an accident or dangerous occurrence that has happened at or near a facility.
 - An OHS inspector may issue a prohibition notice to the operator of a facility in order to remove an immediate threat to the safety and health of any person.
 - 15 • An OHS inspector may issue an improvement notice specifying action that is to be taken to prevent contravention of a listed OSH law.
 - An OHS inspector must prepare a report about an inspection and give the report to the Safety Authority.

20 **47. Powers, functions and duties of OHS inspectors**

- (1) An OHS inspector has the powers, functions and duties conferred or imposed by each listed OSH law.
- 25 (2) The Safety Authority may give written directions specifying the manner in which, and the conditions subject to which, powers conferred on OHS inspectors by a listed OSH law are to be exercised. If it does so, the powers of OHS inspectors must be exercised in accordance with those directions.
- 30 (3) The Safety Authority may, by notice in writing, impose restrictions, not inconsistent with any direction in force under subclause (2), on the powers that are conferred on a particular OHS inspector by a listed OSH law. If it does so,

the powers of the OHS inspector are taken to have been restricted accordingly.

Subdivision 2 — Inspections

48. Inspections

- 5 (1) An OHS inspector may, at any time, conduct an inspection —
- (a) to ascertain whether a requirement of, or any requirement properly made under, a listed OSH law is being complied with;
- 10 (b) concerning a contravention or a possible contravention of a listed OSH law; or
- (c) concerning an accident or dangerous occurrence that has happened at a facility.
- 15 (2) The Safety Authority may direct an OHS inspector to conduct an inspection —
- (a) to ascertain whether a requirement of, or any requirement properly made under, a listed OSH law is being complied with;
- 20 (b) concerning a contravention or a possible contravention of a listed OSH law; or
- (c) concerning an accident or dangerous occurrence that has happened at a facility,

and the OHS inspector must, unless the Safety Authority revokes the direction, conduct an inspection accordingly.

25 **Subdivision 3 — Powers of OHS inspectors in relation to the conduct of inspections**

49. Powers of entry and search — facilities

- (1) An OHS inspector may, for the purposes of an inspection, at any reasonable time during the day or night —
- 30 (a) enter the facility to which the inspection relates and do all or any of the following —
- (i) search the facility;

- 5
- (ii) inspect, examine, take measurements of, or conduct tests concerning, any workplace at the facility or any plant, substance or thing at the facility;
- (iii) take photographs of, make video recordings of, or make sketches of, any workplace at the facility or any plant, substance or thing at the facility;
- 10 (iv) inspect, take extracts from, or make copies of, any documents at the facility that the OHS inspector has reasonable grounds to believe relate, or are likely to relate, to the subject matter of the inspection;
- and
- 15 (b) inspect the seabed and subsoil in the vicinity of the facility to which the inspection relates.
- (2) Immediately on entering a facility for the purposes of an inspection, an OHS inspector must take reasonable steps to notify the purpose of entering the facility to —
- 20 (a) the operator's representative at the facility; and
- (b) if there is a safety and health representative for a designated work group having a group member likely to be affected by the matter the subject of the inspection — that representative,
- 25 and must, on being requested to do so by the person referred to in paragraph (a) or (b), produce for inspection by that person —
- (c) the OHS inspector's identity card;
- 30 (d) a copy of the Safety Authority's written direction (if any) to conduct the inspection; and
- (e) a copy of the restrictions (if any) imposed on the powers of the OHS inspector under clause 47(3).
- 35 (3) If there is a safety and health representative for a designated work group having a group member likely to be affected by the matter the subject of the inspection, the OHS inspector must afford the safety and health representative a reasonable

opportunity to consult on the matter the subject of the inspection.

50. Powers of entry and search — regulated business premises (other than facilities)

- 5 (1) An OHS inspector may, for the purposes of an inspection —
- (a) at any reasonable time, enter any regulated business premises (other than a facility) if the OHS inspector has reasonable grounds to believe that there are likely to be at those premises documents that relate to a facility that is, or to facility operations that are, the subject of the inspection; and
- 10 (b) search for, inspect, take extracts from, or make copies of, any such documents at those premises.
- (2) Immediately on entering premises referred to in subclause (1), an OHS inspector must take reasonable steps to notify the purpose of the entry to the occupier of those premises, and must, on being requested to do so by the occupier, produce for inspection by the occupier —
- 15 (a) the OHS inspector's identity card;
- 20 (b) a copy of the Safety Authority's written direction (if any) to conduct the inspection; and
- (c) a copy of the restrictions (if any) imposed on the powers of the OHS inspector under clause 47(3).

51. Powers of entry and search — premises (other than regulated business premises)

- 25 (1) An OHS inspector may, for the purposes of an inspection —
- (a) enter any premises (other than regulated business premises) if the OHS inspector has reasonable grounds to believe that there are likely to be at those premises documents that relate to a facility that is, or to facility operations that are, the subject of the inspection; and
- 30 (b) search for, inspect, take extracts from, or make copies of, any such documents at those premises.

- 5
- (2) An OHS inspector may exercise the powers referred to in subclause (1) to enter premises only —
- (a) if the premises are not a residence —
- (i) in accordance with a warrant under clause 52;
- (ii) with the consent of the occupier of the premises;
- or
- 10 (b) if the premises are a residence — with the consent of the occupier of the premises.
- (3) Immediately on entering premises referred to in subclause (1), an OHS inspector must —
- (a) take reasonable steps to notify the purpose of the entry to the occupier of those premises;
- 15 (b) take reasonable steps to produce, for inspection by the occupier, the OHS inspector's identity card; and
- (c) on being requested to do so by the occupier, produce, for inspection by the occupier —
- 20 (i) a copy of the Safety Authority's written direction (if any) to conduct the inspection; and
- (ii) a copy of the restrictions (if any) imposed on the powers of the OHS inspector under clause 47(3).
- 25 (4) If —
- (a) an OHS inspector enters premises in accordance with a warrant under clause 52; and
- (b) the occupier of the premises is present at the premises,
- 30 the OHS inspector must make a copy of the warrant available to the occupier.

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(5) Before obtaining the consent of a person as mentioned in subclause (2)(a) or (b), an OHS inspector must inform the person that —

- 5 (a) the person may refuse consent; and
(b) the consent may be withdrawn.

(6) The consent of a person is not effective for the purposes of subclause (2) unless the consent is voluntary.

52. Warrant to enter premises (other than regulated business premises)

10 (1) An OHS inspector may apply to a magistrate for a warrant authorising the inspector, with any assistance as the inspector thinks necessary, to exercise the powers referred to in clause 51(1) in relation to particular premises (other than a residence).

15 (2) The application must be supported by evidence on oath (whether oral or by affidavit) that sets out the grounds on which the inspector is applying for the warrant.

20 (3) If the magistrate is satisfied that there are reasonable grounds for issuing the warrant, the magistrate may issue the warrant.

(4) A warrant issued under subclause (3) must state —

- 25 (a) the name of the inspector;
(b) whether the inspection may be carried out at any time or only during specified hours of the day;
(c) the day on which the warrant ceases to have effect; and
(d) the purposes for which the warrant is issued.

(5) The day specified under subclause (4)(c) is not to be more than 7 days after the day on which the warrant is issued.

30 (6) The purposes specified under subclause (4)(d) must include the identification of the premises in relation to which the warrant is issued.

53. Obstructing or hindering OHS inspector

A person must not, without reasonable excuse, obstruct or hinder an OHS inspector in the exercise of an OHS inspector's powers under clause 49, 50 or 51.

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Penalty: \$5 500.

54. Power to require assistance and information

(1) An OHS inspector may, to the extent that it is reasonably necessary to do so in connection with the conduct of an inspection, require —

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- (a) the operator of a facility;
- (b) the person in charge of operations at a workplace in relation to a facility;
- (c) a member of the workforce at a facility; or
- (d) any person representing a person referred to in paragraph (a) or (b),

15

to provide the OHS inspector with reasonable assistance and amenities —

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- (e) that is or are reasonably connected with the conduct of the inspection at or near the facility; or
- (f) for the effective exercise of the OHS inspector's powers under this Schedule in connection with the conduct of the inspection at or near the facility.

25

(2) The reasonable assistance referred to in subclause (1) includes, so far as the operator of the facility is concerned —

30

- (a) appropriate transport to or from the facility for the OHS inspector and for any equipment required by the OHS inspector, or any article of which the OHS inspector has taken possession; and
- (b) reasonable accommodation and means of subsistence while the OHS inspector is at the facility.

- (3) A person must not fail, without reasonable excuse, to comply with a requirement under this clause.
Penalty: \$3 300 or imprisonment for 6 months or both.

55. Power to require the answering of questions and the production of documents or articles

5

- (1) If —
- (a) an OHS inspector believes on reasonable grounds that a person is capable of answering a question that is reasonably connected with the conduct of an inspection; and
- (b) the person is —
- (i) the operator of a facility;
- (ii) the person in charge of operations at a workplace in relation to a facility;
- (iii) a member of the workforce at a facility; or
- (iv) any person representing a person referred to in subparagraph (i) or (ii),

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the OHS inspector may, to the extent that it is reasonably necessary to do so in connection with the conduct of the inspection, require the person to answer the question put by the OHS inspector.

- (2) If, at the time when a requirement under subclause (1) is imposed on a person, the person is not physically present on regulated business premises, the person is not obliged to comply with the requirement unless the requirement —
- (a) is in writing;
- (b) specifies the day on or before which the question is to be answered (being at least 14 days after the day on which the requirement is imposed); and
- (c) is accompanied by a statement to the effect that a failure to comply with the requirement is an offence.

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30

(3) If —

(a) an OHS inspector believes on reasonable grounds that a person is capable of producing a document or article that is reasonably connected with the conduct of an inspection; and

(b) the person is —

(i) the operator of a facility;

(ii) the person in charge of operations at a workplace in relation to a facility;

(iii) a member of the workforce at a facility; or

(iv) any person representing a person referred to in subparagraph (i) or (ii),

the OHS inspector may, to the extent that it is reasonably necessary to do so in connection with the conduct of the inspection, require the person to produce the document or article.

(4) If, at the time when a requirement under subclause (3) is imposed on a person, the person is not physically present on regulated business premises, the person is not obliged to comply with the requirement unless the requirement —

(a) is in writing;

(b) specifies the day on or before which the document or article is to be produced (being at least 14 days after the day on which the requirement is imposed); and

(c) is accompanied by a statement to the effect that a failure to comply with the requirement is an offence.

(5) A person must not —

(a) fail, without reasonable excuse, to comply with a requirement under this clause; or

(b) in purported compliance with a requirement under this clause, give information that is false or misleading in a material particular.

Penalty: \$3 300 or imprisonment for 6 months or both.

56. Privilege against self-incrimination

- 5 (1) A person is not excused from answering a question or producing a document or article when required to do so under clause 55 on the ground that the answer to the question, or the production of the document or article, may tend to incriminate the person or make the person liable to a penalty.
- 10 (2) However —
- (a) the answer given or document or article produced;
 - (b) answering the question or producing the document or article; or
 - (c) any information, document or thing obtained as a direct or indirect consequence of the answering of the question or the production of the document or article,
- 15
- is not admissible in evidence against the person —
- (d) in any civil proceedings; or
 - (e) in any criminal proceedings other than proceedings for an offence against clause 55.

20 **57. Power to take possession of plant, take samples of substances etc.**

- 25 (1) In conducting an inspection, an OHS inspector may, to the extent that it is reasonably necessary for the purposes of inspecting, examining, taking measurements of or conducting tests concerning, any plant, substance or thing at a facility in connection with the inspection —
- (a) take possession of the plant, substance or thing and remove it from the facility; or
 - (b) take a sample of the substance or thing and remove that sample from the facility.
- 30
- (2) On taking possession of plant, a substance or a thing, or taking a sample of a substance or thing, the OHS inspector must, by notice in writing, inform —
- (a) the operator of the facility;

- 5
- (b) if the plant, substance or thing is used for the performance of work by an employer of a member or members of the workforce at the facility other than the operator of the facility — that employer;
- (c) if the plant, substance or thing is owned by a person other than a person mentioned in paragraph (a) or (b) — that person; and
- 10 (d) if there is a safety and health representative for a designated work group that includes a member of the workforce who is affected by the matter to which the inspection relates — that representative,
- of the taking of possession or the taking of the sample, as the case may be, and the reasons for it.
- 15 (3) If the OHS inspector gives the notice to the operator of the facility to which the inspection relates, the operator's representative at the facility must cause the notice to be displayed in a prominent place at the workplace from which the plant, substance or thing was removed.
- 20 (4) If the OHS inspector takes possession of plant, a substance or a thing at a workplace for the purpose of inspecting, examining, taking measurements of or conducting tests concerning, the plant, substance or thing, the OHS inspector must —
- 25 (a) ensure that the inspection, examination, measuring or testing is conducted as soon as practicable; and
- (b) return it to the workplace as soon as practicable afterwards.
- 30 (5) As soon as practicable after completing any such inspection, examination, measurement or testing, the OHS inspector must give a written statement setting out the results to each person whom the OHS inspector is required to notify under subclause (2).

58. Power to direct that workplace etc. not be disturbed

- 35 (1) An OHS inspector may give a direction under subclause (2) if, in conducting an inspection, the OHS inspector has

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reasonable grounds to believe that it is reasonably necessary to do so in order to —

- (a) remove an immediate threat to the safety or health of any person; or
 - 5 (b) allow the inspection, examination or taking of measurements of, or conducting of tests concerning, a facility or any plant, substance or thing at the facility.
- (2) If subclause (1) applies, the OHS inspector may direct, by written notice given to the operator's representative at the facility, that the operator must ensure that —
- 10 (a) a particular workplace; or
 - (b) particular plant, or a particular substance or thing,
- not be disturbed for a period specified in the direction.
- (3) The period specified in the direction must be a period that the OHS inspector has reasonable grounds to believe is necessary in order to remove the threat or to allow the inspection, examination, measuring or testing to take place.
- (4) The direction may be renewed by another direction in the same terms.
- 20 (5) If an OHS inspector gives a notice to the operator's representative under subclause (2), the operator's representative must cause the notice to be displayed in a prominent place at the workplace —
- 25 (a) that is to be left undisturbed; or
 - (b) where the plant, substance or thing that is to be left undisturbed is located.
- (6) As soon as practicable after giving the direction, the OHS inspector must take reasonable steps to notify —
- 30 (a) if the workplace, plant, substance or thing to which the direction relates is owned by a person other than the operator of the facility — that person; and

- (b) if there is a safety and health representative for a designated work group that includes a group member performing work —
- (i) at a workplace; or
 - (ii) involving the plant, substance or thing, to which the direction relates — that representative, of the direction and the reasons for giving it.
- (7) The operator of a facility to which a direction concerning a workplace, plant, substance or a thing relates must ensure that the direction is complied with.
Penalty: \$27 500.
- (8) A direction under subclause (2) must be accompanied by a statement setting out the reasons for the direction.

59. Power to issue prohibition notices

- (1) If, having conducted an inspection, an OHS inspector is satisfied on reasonable grounds that it is reasonably necessary to issue a prohibition notice to the operator of a facility in order to remove an immediate threat to the safety or health of any person, the OHS inspector may issue a prohibition notice, in writing, to the operator.
- (2) The notice must be issued to the operator by giving it to the operator's representative at the facility.
- (3) The notice must —
- (a) specify the activity in respect of which, in the OHS inspector's opinion, the threat to safety or health has arisen, and set out the reasons for that opinion; and
 - (b) either —
 - (i) direct the operator to ensure that the activity is not engaged in; or
 - (ii) direct the operator to ensure that the activity is not engaged in in a specified manner.

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- (4) A specified manner may relate to any one or more of the following —
- (a) any workplace, or part of a workplace, at which the activity is not to be engaged in;
 - (b) any plant or substance that is not to be used in connection with the activity;
 - (c) any procedure that is not to be followed in connection with the activity.
- (5) The notice may specify action that may be taken to satisfy an OHS inspector that adequate action has been taken to remove the threat to safety and health.
- (6) The operator's representative at the facility must —
- (a) give a copy of the notice to each safety and health representative (if any) for any designated work group having group members performing work that is affected by the notice; and
 - (b) cause a copy of the notice to be displayed at a prominent place at or near each workplace at which that work is performed.
- (7) If the notice relates to any workplace, plant, substance or thing that is owned by a person other than the operator, the OHS inspector must, upon issuing the notice, give a copy of the notice to that person.

60. Compliance with prohibition notice

- (1) An operator must ensure that a prohibition notice issued to the operator is complied with.
Penalty: \$27 500.
- (2) If an OHS inspector is satisfied that action taken by the operator to remove the threat to safety and health in respect of which the notice was issued is not adequate, the OHS inspector must inform the operator accordingly.
- (3) A prohibition notice ceases to have effect when an OHS inspector notifies the operator that the OHS inspector is

satisfied that the operator has taken adequate action to remove the threat to safety or health.

- 5 (4) In making a decision under subclause (2), an OHS inspector may exercise any of the powers of an OHS inspector conducting an inspection that the inspector considers necessary for the purposes of making the decision.

61. Power to issue improvement notices

- 10 (1) If, in conducting an inspection, an OHS inspector believes on reasonable grounds that a person —

- (a) is contravening a listed OSH law; or
(b) has contravened a provision of a listed OSH law and is likely to contravene that provision again,

the OHS inspector may issue an improvement notice, in writing, to the person (the “**responsible person**”).

- 15 (2) If the responsible person is the operator, the improvement notice may be issued to the operator by giving it to the operator’s representative at the facility.

- 20 (3) If the responsible person is an employer (other than the operator) of members of the workforce, but it is not practicable to give the notice to that employer —

- (a) the improvement notice may be issued to the employer by giving it to the operator’s representative at the facility; and
(b) if the notice is so issued — the operator must ensure that a copy of the notice is given to the employer as soon as practicable afterwards.

- 25 (4) The notice —

- 30 (a) must specify the contravention that the OHS inspector believes is occurring or is likely to occur, and set out the reasons for that belief;
(b) must specify a reasonable period within which the responsible person is to take the action necessary to prevent any further contravention or to prevent the likely contravention, as the case may be; and

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- (c) may specify action that the responsible person is to take during the period specified in the notice.
- 5 (5) If the OHS inspector believes on reasonable grounds that it is appropriate to do so, the OHS inspector may, in writing and before the end of the period, extend the period specified in the notice.
- 10 (6) If an improvement notice is issued to an employer (other than the operator) of members of the workforce in circumstances other than the circumstance referred to in subclause (3), the employer must immediately ensure that a copy of the notice is given to the operator's representative at the facility.
- 15 (7) If a notice is issued to the operator or to an employer (other than the operator) of members of the workforce, the operator's representative at the facility must —

 - (a) give a copy of the notice to each safety and health representative for a designated work group having group members performing work that is affected by the notice; and
 - 20 (b) cause a copy of the notice to be displayed in a prominent place at or near each workplace at which the work is being performed.
- 25 (8) On issuing a notice, the OHS inspector must give a copy of the notice to —

 - (a) if the notice is —

 - (i) given to a member of the workforce who is an employee; and
 - (ii) in connection with work performed by the employee,
 - 30 the employer of that employee;
 - (b) if the notice relates to any workplace, plant, substance or thing that is owned by a person other than —

 - (i) a responsible person; or

- (ii) a person who is an employer referred to in paragraph (a),
that owner; and
- 5 (c) if the notice is issued to a person who owns any workplace, plant, substance or thing, because of which a contravention of a listed OSH law has occurred or is likely to occur —
- (i) the operator of the facility; and
- 10 (ii) if the employer of employees who work in that workplace or who use that plant, substance or thing is a person other than the operator — that employer.

62. Compliance with improvement notice

15 A person to whom an improvement notice is issued must comply with it to the extent that the notice relates to any matter over which the person has control.

Penalty: \$11 000.

63. Notices not to be tampered with or removed

- 20 (1) A person must not, without reasonable excuse, tamper with any notice that has been displayed under clause 57(3), 58(5), 59(6) or 61(7) while that notice is so displayed.
- (2) If a notice has been displayed under clause 57(3), a person must not, without reasonable excuse, remove the notice until the plant or thing to which the notice relates is returned to the workplace from which it was removed.
- 25 (3) If a notice has been displayed under clause 58(5), 59(6) or 61(7), a person must not, without reasonable excuse, remove the notice before it has ceased to have effect.

Penalty applicable to subclauses (1), (2) and (3): \$11 000.

Subdivision 4 — Reports on inspections

64. Reports on inspections

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- (1) If an OHS inspector has conducted an inspection, the OHS inspector must, as soon as practicable, prepare a written report relating to the inspection and give the report to the Safety Authority.
- 10
- (2) The report must include —
- (a) the OHS inspector's conclusions from conducting the inspection and the reasons for those conclusions;
 - (b) any recommendations that the OHS inspector wishes to make arising from the inspection; and
 - (c) any other prescribed matters.
- 15
- (3) As soon as practicable after receiving the report, the Safety Authority must give a copy of the report, together with any written comments that it wishes to make —
- (a) to the operator of the facility to which the report relates;
 - 20 (b) if the report relates to activities performed by an employee of another person — that other person; and
 - (c) if the report relates to any plant, substance or thing owned by another person — that other person.
- 25
- (4) The Safety Authority may, in writing, request the operator or any other person to whom the report is given to provide to the Safety Authority, within a reasonable period specified in the request, details of —
- 30 (a) any action proposed to be taken as a result of the conclusions or recommendations contained in the report; and

- (b) if a notice has been issued under clause 59 or 61 in relation to work being performed for the operator or that other person — any action taken, or proposed to be taken, in respect of that notice,
- 5 and the operator or that other person must comply with the request.
- (5) As soon as practicable after receiving a report, the operator of a facility must give a copy of the report, together with any written comment made by the Safety Authority on the report —
- 10 (a) if there is at least one safety and health committee in respect of some or all of the members of the workforce — to each such committee; and
- (b) if there is no such committee in respect of some or all of the members of the workforce, but some or all of those members (in respect of which there is no such committee) are in at least one designated work group for which there is a safety and health representative — to each such safety and health representative.
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Subdivision 5 — Reviews of OHS inspectors' decisions

65. Reviews of decisions of OHS inspectors

- (1) If an OHS inspector, in conducting an inspection or having conducted an inspection —
- 25 (a) decides, under clause 38, to confirm or vary a provisional improvement notice;
- (b) decides, under clause 57, to take possession of plant, a substance or a thing at a workplace;
- 30 (c) decides, under clause 58, to direct that a workplace, a part of a workplace, plant, a substance or a thing not be disturbed;
- (d) decides, under clause 59, to issue a prohibition notice;
- 35 (e) decides, under clause 60, that the operator of a facility to whom a prohibition notice has been

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issued has not taken adequate action to remove the threat to safety and health that caused the notice to be issued; or

- 5 (f) decides, under clause 61, to issue an improvement notice,

a person referred to in subclause (2) may apply in writing to the reviewing authority for a review of the decision.

- (2) The following persons may apply for a review of a decision, as is relevant to the case —

- 10 (a) the operator of the facility or any employer (other than the operator) who is affected by the decision;
- (b) a person to whom a notice has been issued under clause 37(2) or 61(1);
- 15 (c) the safety and health representative for a designated work group having a group member affected by the decision;
- (d) a workforce representative in relation to the designated work group that includes a group member who is affected by the decision and who has requested the workforce representative to apply for a review of the decision;
- 20 (e) if there is no such designated work group, and a member of the workforce affected by the decision has requested a workforce representative in relation to the member to apply for a review of the decision — that workforce representative;
- 25 (f) a person who owns any workplace, plant, substance or thing to which the decision referred to in subclause (1)(a), (b), (c) or (f) relates.

- 30 (3) If an OHS inspector, having conducted an inspection —

- (a) decides under clause 38 to cancel a provisional improvement notice; or
- (b) decides under clause 60 that the operator of a facility to whom a prohibition notice has been issued has taken adequate action to remove the
- 35

threat to safety and health that caused the notice to be issued,

the following persons may apply in writing to the reviewing authority for a review of the decision, as is relevant to the case —

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(c) the safety and health representative for a designated work group having a group member affected by the decision;

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(d) a workforce representative in relation to the designated work group that includes a group member who is affected by the decision and who has requested the workforce representative to apply for the review;

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(e) if there is no such designated work group, and a member of the workforce affected by the decision has requested a workforce representative in relation to the member to apply for the review — that workforce representative.

(4) An application under subclause (2) or (3) must be made —

20

(a) not later than 7 days after the day on which the person applying received notice of the inspector's decision; or

(b) within such further period as the reviewing authority may allow.

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(5) A person, other than the operator of the facility concerned, who applies for a review of a decision must, as soon as is practicable, give a copy of the application to the operator.
Penalty: \$5 000.

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(6) The reviewing authority is to give notice in writing of the decision on the reference and the reasons for the decision to —

(a) the person who referred the matter for review; and

(b) if that person is not the operator of the facility concerned, to the operator.

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- 5 (7) Subject to this clause, applying for a review of a decision does not affect the operation of the decision or prevent the taking of action to implement that decision, except to the extent that the reviewing authority makes an order to the contrary.
- 10 (8) If the decision to be reviewed is a decision under clause 61 to issue an improvement notice, the operation of the notice is suspended pending determination of the decision, except to the extent that the reviewing authority makes an order to the contrary.
- 15 (9) If the decision to be reviewed is a decision of an OHS inspector under clause 38 to confirm or vary a provisional improvement notice whose operation has been suspended pending the inspection of the matter to which the notice relates, the operation of the notice is further suspended pending determination of the review, except to the extent that the reviewing authority makes an order to the contrary.
- 20 (10) In this clause —
“**reviewing authority**” means a person prescribed by the regulations to be a reviewing authority for the purposes of this clause.

66. Powers of reviewing authority on review

- 25 (1) On a review of a decision under clause 65, the reviewing authority may —
- (a) affirm the decision;
- (b) affirm the decision with such modifications as the reviewing authority considers appropriate; or
- 30 (c) revoke the decision and make such other decision with respect to the matter as the reviewing authority thinks fit,

and the decision has effect or, as the case may be, ceases to have effect accordingly.

- (2) If —
- (a) the decision being reviewed is a decision under clause 57 to take possession of plant, a substance or a thing at a workplace; and
 - (b) the decision is not affirmed,

the inspector who made the decision must ensure that, to the extent that the decision is not affirmed, the plant, substance or thing is returned to the workplace as soon as practicable.

Division 5 — Referrals to the Tribunal

67. Decision may be referred to Tribunal

- (1) If a person given notice of a decision under clause 22(3)(b) or 65(6) is not satisfied with the reviewing authority's decision under that section, the person may refer the decision to the Tribunal for further review.
- (2) A reference under subclause (1) must be made —
 - (a) not later than 7 days after the day on which the person received notice of the decision; or
 - (b) within such further period as the Tribunal may allow.
- (3) A person, other than the operator of the facility concerned, who refers a matter for review under this clause must, as soon as is practicable, give a copy of the duly completed prescribed form to the operator.

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

68. Determination by Tribunal

- (1) On a reference under clause 67, the Tribunal is to inquire into the circumstances relating to the decision, and may —
 - (a) affirm the decision of the reviewing authority;
 - (b) affirm the decision of the reviewing authority with such modifications as the Tribunal considers appropriate; or

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- (c) revoke the decision of the reviewing authority and make such other decision with respect to the notice as the Tribunal thinks fit,

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and the decision has effect or, as the case may be, ceases to have effect accordingly.

- (2) A review under this clause —
 - (a) is to be in the nature of a rehearing; and
 - (b) is to be completed by the Tribunal as quickly as is practicable.

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- (3) The Tribunal is to give notice in writing of its decision on the reference and the reasons for the decision to —
 - (a) the person who referred the matter for review; and
 - (b) if that person is not the operator of the facility concerned, to the operator.

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69. Effect of pending review by Tribunal

- (1) Subject to this clause, a reference to the Tribunal for further review of a decision does not affect the operation of the decision or prevent the taking of action to implement that decision, except to the extent that the Tribunal makes an order to the contrary.
- (2) If the decision to be reviewed concerns a decision under clause 61 to issue an improvement notice, the operation of the notice is suspended pending determination of the review, except to the extent that the Tribunal makes an order to the contrary.
- (3) If the decision to be reviewed concerns a decision of an inspector under clause 38 to confirm or vary a provisional improvement notice whose operation has been suspended pending the inspection of the matter to which the notice relates, the operation of the notice is further suspended pending determination of the review, except to the extent that the Tribunal makes an order to the contrary.

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70. Jurisdiction of Tribunal

- (1) This clause applies where —
- (a) under clause 67 a matter is referred to the Tribunal;
or
 - (b) under clause 31 an application is made to the Tribunal.

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- (2) Where this clause applies —
- (a) the matter or application may be heard and determined; and
 - (b) a determination made by the Tribunal on the matter or application has effect, and may be appealed against and enforced,

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as if it were —

- (c) a matter in respect of which jurisdiction is conferred on the Tribunal by Part VIB of the *Occupational Safety and Health Act 1984*; or
- (d) a determination made for the purposes of that Part.

15

- (3) The provisions of —
- (a) Part VIB of the *Occupational Safety and Health Act 1984*; and
 - (b) the *Industrial Relations Act 1979* applied by that Part,

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have effect for the purposes of this clause with all necessary changes.

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- (4) In the operation of subclause (3), section 51J(1) of the *Occupational Safety and Health Act 1984* has effect as if it were expressed to apply where a matter has been referred to the Tribunal under clause 67 in relation to a decision made under clause 22.

Division 6 — General

71. Notifying and reporting accidents and dangerous occurrences

- (1) If, at or near a facility, there is —
- (a) an accident that causes the death of, or serious personal injury to, any person;
 - (b) an accident that causes a member of the workforce to be incapacitated from performing work for a period prescribed for the purposes of this paragraph; or
 - (c) a dangerous occurrence,

the operator must, in accordance with the regulations, give the Safety Authority notice of, and a report about, the accident or dangerous occurrence.

Penalty: \$5 000.

- (2) Regulations made for the purposes of subclause (1) (other than regulations made for the purpose of subclause (1)(b)) may prescribe —
- (a) the time within which, and the manner in which, notice of an accident or dangerous occurrence is to be given, and the form of the notice; and
 - (b) the time within which, and the manner in which, a report of an accident or dangerous occurrence is to be given, and the form of the report.
- (3) Subclause (2) does not limit regulations that may be made for the purposes of subclause (1).

72. Records of accidents and dangerous occurrences to be kept

- (1) The operator of a facility must maintain, in accordance with the regulations, a record of each accident or dangerous occurrence in respect of which the operator is required by clause 68 to notify the Safety Authority.

- (2) Regulations made for the purposes of subclause (1) may prescribe —
- (a) the nature of the contents of a record maintained under this clause; and
 - (b) the period for which the record must be retained.
- (3) Subclause (2) does not limit regulations that may be made for the purposes of subclause (1).

73. Codes of practice

- (1) The regulations may prescribe codes of practice for the purpose of providing practical guidance to operators of facilities and employers (other than operators) of members of the workforce at facilities.
- (2) A person is not liable in any civil or criminal proceedings for contravening a code of practice.

74. Use of codes of practice in proceedings

- (1) This clause applies if, in any proceedings for an offence against a listed OSH law, it is alleged that a person contravened a provision of a listed OSH law in relation to which a code of practice was in effect at the time of the alleged contravention.
- (2) The code of practice is admissible in evidence in those proceedings.
- (3) If the court is satisfied, in relation to any matter which it is necessary for the prosecution to prove in order to establish the alleged contravention, that —
- (a) any provision of the code of practice is relevant to that matter; and
 - (b) the person failed at any material time to comply with that provision of the code of practice,
- that matter is treated as proved unless the court is satisfied that in respect of that matter the person complied with that provision of the listed OSH law otherwise than by complying with the code of practice.

75. Interference etc. with equipment etc.

5 A person must not, without reasonable excuse, do anything that results in the interference with, or the rendering ineffective of, any protective equipment or safety device provided for the occupational safety and health of members of the workforce at a facility if the person knew (or ought reasonably to have known) that the equipment or device was protective equipment or a safety device.

Penalty: \$3 300 or imprisonment for 6 months or both.

10 **76. No charges to be levied on members of workforce**

15 The operator of a facility or an employer (other than the operator) of members of the workforce at a facility must not levy, or permit to be levied, on a member of the workforce any charge in respect of anything done or provided in accordance with a listed OSH law in order to ensure the occupational safety and health of persons at or near the facility.

Penalty: \$27 500.

77. Victimisation

20 (1) An employer (whether the operator or another person) must not —

- (a) dismiss an employee;
- (b) perform an act that results in injury to an employee in his or her employment;
- 25 (c) perform an act that prejudicially alters the employee's position (whether by deducting or withholding remuneration or by any other means);
or
- (d) threaten to do any of those things,

30 because the employee —

- (e) has complained or proposes to complain about a matter concerning the safety or health of employees at work;

- 5
- (f) has assisted or proposes to assist, by giving information or otherwise, the conduct of an inspection; or
- (g) has ceased, or proposes to cease, to perform work, in accordance with a direction by a safety and health representative under clause 43(1)(b) or (3)(c), and the cessation or proposed cessation does not continue after —
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- (i) the safety and health representative has agreed with a person supervising the work that the cessation or proposed cessation was not, or is no longer, necessary; or
- (ii) an OHS inspector has, under clause 43(5), made a decision that has the effect that the employee should perform the work.
- 15

Penalty: \$27 500.

- (2) In proceedings for an offence against subclause (1), if all the relevant facts and circumstances, other than the reason for an action alleged in the charge, are proved, the defendant has the onus of establishing that the action was not taken for that reason.
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78. Institution of prosecutions

- (1) Proceedings for an offence against a listed OSH law may be instituted by the Safety Authority or by an OHS inspector.
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- (2) A safety and health representative for a designated work group may request the Safety Authority to institute proceedings for an offence against a listed OSH law in relation to the occurrence of an act or omission if —
- 30
- (a) a period of 6 months has elapsed since the act or omission occurred;
- (b) the safety and health representative considers that the occurrence of the act or omission constitutes an offence against a listed OSH law; and
- (c) proceedings in respect of the offence have not been instituted.
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- (3) A workforce representative in relation to a designated work group may request the Safety Authority to institute proceedings for an offence against a listed OSH law in relation to the occurrence of an act or omission if —
- 5 (a) a period of 6 months has elapsed since the act or omission occurred;
- (b) the workforce representative considers that the occurrence of the act or omission constitutes an offence against a listed OSH law;
- 10 (c) proceedings in respect of the offence have not been instituted; and
- (d) a group member included in the group requests the workforce representative to request the Safety Authority to institute the proceedings.
- 15 (4) A request under subclause (2) or (3) must be in writing.
- (5) The Safety Authority must, within 3 months after receiving the request, advise the safety and health representative or the workforce representative, as the case may be, whether proceedings under subclause (1) have been or will be
- 20 instituted, and, if not, give reasons why not.

79. Conduct of directors, employees and agents

- (1) This clause has effect for the purposes of a proceeding for an offence against a listed OSH law.
- 25 (2) If it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show —
- (a) that the conduct was engaged in by a director, employee or agent of the body corporate within the scope of actual or apparent authority; and
- 30 (b) that the director, employee or agent had the state of mind.
- (3) Any conduct engaged in on behalf of a body corporate by a director, employee or agent of the body corporate within the scope of actual or apparent authority is taken to have been
- 35 engaged in also by the body corporate unless it establishes

that it took reasonable precautions and exercised due diligence to avoid the conduct.

5 (4) If it is necessary to establish the state of mind of a natural person in relation to particular conduct, it is sufficient to show —

(a) that the conduct was engaged in by an employee or agent of the natural person within the scope of actual or apparent authority; and

(b) that the employee or agent had the state of mind.

10 (5) Any conduct engaged in on behalf of a natural person by an employee or agent of the natural person within the scope of actual or apparent authority is taken to have been engaged in also by the natural person unless the natural person
15 establishes that he or she took reasonable precautions and exercised due diligence to avoid the conduct.

(6) If —

(a) a natural person is found guilty of an offence; and

(b) he or she would not have been found guilty of the offence if subclauses (4) and (5) had not been
20 enacted,

he or she is not liable to be punished by imprisonment for that offence.

(7) A reference in subclause (2) or (4) to the state of mind of a person includes a reference to —

25 (a) the person's knowledge, intention, opinion, belief or purpose; and

(b) the person's reasons for the intention, opinion, belief or purpose.

80. Act not to give rise to other liabilities etc.

30 This Schedule does not —

(a) confer a right of action in any civil proceeding in respect of any contravention of a listed OSH law; or

- (b) confer a defence to an action in any civil proceeding or otherwise affect a right of action in any civil proceeding.

5 **81. Circumstances preventing compliance may be defence to prosecution**

It is a defence to a prosecution for a contravention of a listed OSH law if the defendant proves that it was not practicable to comply with it because of an emergency prevailing at the relevant time.

10 **82. Regulations — general**

- (1) The regulations may prescribe any of the following —

- 15 (a) procedures for the selection of persons, under clause 40, as members of safety and health committees, to represent the interests of members of the workforce at a facility;
- (b) procedures to be followed at meetings of safety and health committees;
- (c) the manner in which notices are to be served under this Schedule or the regulations;
- 20 (d) the practice and procedure to be followed in relation to the review of decisions under clause 22 or 65 by reviewing authorities;
- (e) forms for the purposes of this Schedule or the regulations.

- 25 (2) If the Minister is satisfied that —

- (a) a power, function or duty is conferred or imposed on a person under a law of this State or the Commonwealth; and
- 30 (b) the proper exercise of the power or performance of the function or duty is or would be prevented by this Schedule or a provision of this Schedule,

regulations made for the purposes of this subclause may declare that this Schedule, or the provision, as the case may

be, does not apply to that person, or does not apply to that person in the circumstances specified in the regulations.

(3) Regulations made for the purposes of subclause (2) do not remain in force for longer than 5 years after they commence, but this subclause does not prevent the making of further regulations of the same substance.

(4) In subclause (2) —
“**this Schedule**” includes regulations made for the purposes of this Schedule.

”.

*Act 1969 or the Petroleum (Submerged Lands)
Act 1982,*

”.

(4) Section 113(1)(d)(ii) is amended as follows:

5

(a) after item (I) by deleting “and”;

(b) after item (II) by inserting the following items —

“

(III) the *Petroleum Act 1967*;

(IV) the *Petroleum Pipelines
Act 1969*;

10

(V) the *Petroleum (Submerged
Lands) Act 1982*;

”.

50. Occupational Safety and Health Act 1984 amended

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(1) The amendments in this section are to the *Occupational Safety and Health Act 1984**.

[* *Reprinted as at 22 March 1999.*

*For subsequent amendments see Western Australian
Legislation Information Tables for 2004, Table 1, p. 310-11
and Act No. 68 of 2004.]*

20

(2) Section 4(2) is repealed and the following section is inserted instead —

“

25

(2) Subject to this section and except as may be otherwise expressly provided by Parliament, this Act does not apply to or in relation to a workplace —

(a) that is, or at which work is carried out on, a mine to which the *Mining Act 1978*, or the *Mines Safety and Inspection Act 1994*, applies;

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(b) at which a petroleum operation, as defined in section 5(1) of the *Petroleum Act 1967*, is carried on;

s. 51

(c) at which a pipeline operation, as defined in section 4(1) of the *Petroleum Pipelines Act 1969*, is carried on; or

5

(d) at which an offshore petroleum operation, as defined in section 4 of the *Petroleum (Submerged Lands) Act 1982*, is carried on.

”.

51. *Petroleum Safety Act 1999* repealed

The *Petroleum Safety Act 1999* is repealed.

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