

IN SENATE, ON THE 12th DAY OF APRIL, 1992.

No. 12 of 1992.

**Occupational Health, Safety and Welfare Act 1991**

Certified on : 15-4-92

THE GOVERNMENT OF ONTARIO HAS THE HONOUR TO ANNOUNCE THAT

THE FOLLOWING BILL HAS BEEN INTRODUCED IN SENATE ON THE 12th DAY OF APRIL, 1992:

THE OCCUPATIONAL HEALTH, SAFETY AND WELFARE ACT, 1991

INDEPENDENT STATE OF PAPUA NEW GUINEA.

No.            of 1992.

*Occupational Health, Safety and Welfare Act 1991.*

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

No. of 1992.

AN ACT

entitled

*Occupational Health, Safety and Welfare Act 1991,*

Being an Act to promote and improve standards for occupational health, safety and welfare, to establish the Occupational Health and Safety Council and to define its powers and functions, and for related purposes,

MADE by the National Parliament to come into operation in accordance with a notice published in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

**PART I. - PRELIMINARY.**

**1. INTERPRETATION.**

In this Act, unless the contrary intention appears -

- "Council" means the Occupational Health and Safety Council established under Section 5;
- "designated work group" means a group of employees at a workplace determined to be a designated work group under Section 37;
- "Director" means the Director appointed under Section 21;
- "employee" means a person employed under a contract of employment or apprenticeship;
- "employer" means a person who employs one or more other persons under contracts of employment or apprenticeship;
- "inspector" means an inspector appointed under this Act;
- "occupier", in relation to a workplace, means a person who has the management or control of the workplace;
- "plant" includes any machinery, equipment, appliance, implement or tool, any component thereof and anything fitted, connected or appurtenant thereto;
- "practicable" means practicable having regard to -
  - (a) the severity of the hazard or risk in question; and
  - (b) the state of knowledge about that hazard or risk and any ways of removing or mitigating that hazard or risk; and
  - (c) the availability and suitability of ways to remove or mitigate that hazard or risk; and
  - (d) the cost of removing or mitigating that hazard or risk;
- "prescribed" means prescribed by this Act or the regulations;
- "self-employed person" means a person who works for gain or reward otherwise than under a contract of employment or apprenticeship, whether or not that person employs one or more other persons;

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- "substance" means any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour;
- "supply", in relation to any plant or substance, includes supply and resupply by way of sale, exchange, lease, hire or hire-purchase, whether as principal or as agent;
- "Trade Union" means an association of employees registered under the *Industrial Organizations Act*;
- "this Act" includes the Regulation, by-laws, rules, codes and manuals made under this Act;
- "workplace" means any place, whether or not in a building or structure, where employees or self-employed persons work.

### 2. APPLICATION.

This Act applies to and in relation to the State and an authority constituted by or under a law.

### 3. EXEMPTIONS.

(1) The Minister, upon the recommendation of the Council, may at any time and from time to time by notice in the National Gazette declare that all or any of the provisions of this Act shall not apply, according to that declaration, in respect of any workplace or part of any workplace, any class or classes of workplace or any other specified premises or any plant, substance or method of work or any class thereof.

(2) A declaration made pursuant to Subsection (1) may be made subject to such conditions as are specified in the declaration.

(3) This Act, or the provisions thereof specified in the declaration made pursuant to Subsection (1) shall not apply in respect of the workplace or part of a workplace, class or classes of workplace or other specified premises, plant, substance or method of work or class thereof for so long as the exemption subsists and, in the case of an exemption subject to conditions, while the conditions are complied with.

(4) The Minister may upon the recommendation of the Council, revoke any exemption granted under Subsection (1) or the conditions attaching to any such exemption.

### 4. OBJECTS OF ACT.

The objects of this Act are -

- (a) to secure the health, safety and welfare of persons at work; and
- (b) to protect persons at work against risks to health or safety; and
- (c) to assist in securing safe and healthy work environments; and
- (d) to eliminate, at the source, risks to the health, safety and welfare of persons at work; and
- (e) to provide for the involvement of employees and employers and associations representing employees and employers in the formulation and implementation of health and safety standards.

## PART II. - OCCUPATIONAL HEALTH AND SAFETY COUNCIL.

### 5. THE COUNCIL.

(1) There is established an Occupational Health and Safety Council.

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- (2) The Council -  
(a) is a body corporate; and  
(b) shall have a seal; and  
(c) may sue and be sued.

(3) All courts, judges and persons acting judicially shall take judicial notice of the imprint of the seal of the Council appearing on a document and shall presume that the document was duly sealed.

- (4) The Council shall consist of -  
(a) the Director, who shall be the Chairman; and  
(b) two members having knowledge of or experience in occupational health and safety appointed by the Minister after consultation with -  
(i) registered industrial organizations composed of or representative of employees; and  
(ii) registered industrial organizations composed of or representative of employers; and  
(c) a nominee of the Departmental Head of the Department of Public Health; and  
(d) four other members appointed by the Minister.

(5) Subject to Section 8, two of the members referred to in Subsection (4)(d) shall be appointed from a panel or panels of names submitted by registered industrial organizations composed of or representative of employees and the other two shall be appointed from a panel or panels of names submitted by registered industrial organizations composed of or representative of employers.

**6. PERIOD OF APPOINTMENT.**

(1) Except for the Director, the appointment of a member of the Council shall commence on the date specified in the notification of appointment published in the National Gazette and shall be for a term of three years.

(2) Subject to Subsection (1), a member of the Council shall be eligible for re-appointment if he is qualified to be nominated.

**7. LEAVE OF ABSENCE.**

The Minister may grant leave of absence to a member of the Council on such terms and conditions as the Minister determines.

**8. TERMS AND CONDITIONS OF APPOINTMENT.**

Subject to this Act, the terms and conditions of service of members of the Council appointed under Section 5(4)(b), (c) and (d) are as determined by the Minister.

**9. ACTING APPOINTMENTS.**

(1) The Minister may, at any time, appoint a person to be an acting member of the Council under Section 5(4)(b), (c) or (d) if -

- (a) for any reason an appointment has not been made; or  
(b) a member is unable to perform his functions and duties.

(2) The appointment of an acting member expires -

- (a) when a member is appointed under Section 5; or  
(b) when a member resumes the exercise of his functions and duties.

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### 10. OATH AND AFFIRMATION.

(1) Before entering on the duties of his office, a member shall take an oath or make an affirmation in the form in Schedule 2.

(2) The oath or affirmation referred to in Subsection (1) shall be taken or made before the Minister or a person appointed by the Minister for the purpose.

### 11. VACATION OF OFFICE.

(1) The office of a member of the Council becomes vacant if the member -

(a) dies; or

(b) resigns his office by writing under his hand delivered to the Minister; or

(c) is absent without prior leave granted by the Chairman from three consecutive ordinary meetings of the Council of which due notice has been given to him; or

(d) becomes bankrupt or otherwise takes advantage of the laws in force for the time being relating to bankruptcy; or

(e) is convicted of an indictable offence (whether upon indictment or by way of summary proceeding) or is convicted of an offence against this Act; or

(f) subject to Subsections (2) and (3), is removed from office by the Minister on the grounds of incapacity to perform his duties as a member or of conduct which, in the opinion of the Minister, shows the member to be unfit to be a member of the Council.

(2) Within -

(a) fourteen days of the receipt of a notice under Subsection (1)(f); or

(b) such shorter period as is specified in the notice,

the member may reply in writing to the Minister who shall consider the reply and as soon as practicable shall give written notice of confirmation or otherwise of his decision to the member.

(3) Where the member referred to in Subsection (1)(f) does not, within the period specified in Subsection 2(a) or (b), reply to the Minister, the appointment of the member is terminated, and the Minister shall notify the member, in writing, of the termination.

(4) Where the appointment of a member is terminated under this section the Minister shall, by notice in the National Gazette, declare the office of that member vacant.

(5) Where an office is declared vacant under Subsection (4), the vacancy shall be filled in accordance with Section 5.

### 12. MEETINGS OF COUNCIL.

(1) The Council shall meet as often as is necessary for the due administration of this Act, at such times and places as it thinks fit, and shall conduct its business in the manner prescribed or, in so far as not prescribed, as it determines from time to time.

(2) at a meeting of the Council -

(a) the Chairman and at least four other members of whom -



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- (i) one shall be a person representative of employees appointed in accordance with Section 5(3); and
  - (ii) one shall be a person representative of employers appointed in accordance with Section 5(3),  
form a quorum; and
  - (b) the Chairman, or acting Chairman shall preside; and
  - (c) all matters shall be decided by a majority of the votes of the members present and voting; and
  - (d) the member presiding has a deliberative and, in the event of an equality of votes on a matter, a casting vote.
- (3) Minutes of each meeting shall be -
- (a) kept by the Chairman of the Council; and
  - (b) confirmed by the Council at the next meeting of the Council; and
  - (c) signed by the Chairman.
- (4) The Chairman shall forward copies of its minutes to the Minister.
- (5) The Council may invite any person or any officer of the Public Service or a representative of any body who, in the opinion of the Council, has expert knowledge concerning occupational health and safety which is likely to be of assistance to the Council to attend a meeting of the Council.
- (6) A person attending a meeting under Subsection (5) may, if invited by the Chairman so to do, take part in any discussion at the meeting, but shall not have any voting rights.

### **13. PROTECTION OF THE COUNCIL.**

A proceeding or decision of the Council shall not be invalidated or made ineffectual by reason only that -

- (a) the whole number of members had not been appointed at the time; or
- (b) any member was not entitled to take part in the proceeding or decision; or
- (c) there is a defect in the appointment of any member.

### **14. PROTECTION OF MEMBERS OF THE COUNCIL.**

No action, suit, prosecution or other proceedings shall be brought or instituted personally against any member of the Council in respect of any act done *bona fide* in pursuance or execution or intended execution of this Act.

### **15. ADVISORY COMMITTEES.**

- (1) The Council may at any time, and when so requested by the Minister shall, appoint advisory committees to assist in the performance of its functions and duties.
- (2) An advisory committee shall consist of one member of the Council and such other persons as are appointed by the Council.
- (3) Subject to any direction of the Council, an advisory committee may regulate its own procedures.
- (4) The members of advisory committees shall be entitled to be paid the travelling and other allowances (if any) fixed from time to time by the Minister.

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### 16. GENERAL PROVISION AS TO FEES, ETC.,

The Minister, in determining what (if any) fees and travelling and other allowances shall be payable to members of the Council, alternate members or members of advisory committees, may distinguish between particular members or particular classes of members.

### 17. ANNUAL AND OTHER REPORTS.

(1) The Council shall on or before 30 December in each year prepare and submit to the Minister a report of its operations and the operation of this Act during the year ending on the preceding 30 June.

(2) The Council may at any time prepare and submit to the Minister such other report in relation to occupational health, safety and welfare as it thinks fit.

(3) The Minister shall cause a report submitted under this section to be laid before the Parliament after receiving the report.

### 18. FUNCTIONS OF THE COUNCIL.

(1) The functions of the Council are -

- (a) to inquire into and report to the Minister within the time specified by the Minister upon any matters referred to it by the Minister; and
- (b) to make recommendations to the Minister with respect to -
  - (i) the operation and administration of this Act and the regulations; and
  - (ii) regulations or codes of practice in relation to occupational health, safety and welfare which it or the Minister proposes should be made or approved; and
- (c) to examine, review and make recommendations in relation to existing and proposed registration or licensing schemes relating to occupational health, safety and welfare; and
- (d) to provide advice to and co-operate with Government departments, public authorities, trade unions, employer organizations and other interested persons in relation to occupational health, safety and welfare; and
- (e) to formulate standards, specifications or other forms of guidance for the purpose of assisting employers, self-employed persons and employees to maintain appropriate standards of occupational health, safety and welfare; and
- (f) to promote education and training and approve courses in occupational health and safety; and
- (g) to devise in co-operation with educational authorities or bodies courses in relation to occupational health, safety and welfare and to recommend that such courses be integrated into programmes in educational institutions; and
- (h) to recommend to the Minister the establishment of public inquiries into any matter relating to occupational health and safety; and
- (i) to collect and disseminate information on occupational health, safety and welfare; and
- (j) to commission and sponsor research into occupational health, safety and welfare,

and include any other functions assigned to it by or under this Act.

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(2) The Council shall issue for public review and comment any regulations or codes of practice with respect to which it proposes under Subsection (1)(b)(ii) to make any recommendations to the Minister.

(3) The Council shall ensure, as far as possible, that any information it provides is in such language and form as are appropriate for the persons to whom the information is directed.

(4) The Minister shall, within 60 days after receiving from the Council a recommendation under Subsection (1) make reply in writing to the Council in relation to that recommendation.

**19. OBTAINING OF INFORMATION BY THE COUNCIL.**

The Council may in writing require any person to furnish to it such information relating to occupational health, safety and welfare as it reasonably requires for the purposes of this Act.

**20. RESTRICTIONS ON DISCLOSURE OF INFORMATION BY THE COUNCIL.**

(1) This section applies to and in relation to any information obtained by the Council under Section 19, being -

(a) information -

(i) furnished by any person involved in any business or commercial or financial undertaking; and

(ii) relating to trade secrets or other matters of a business or commercial or financial nature; and

(iii) disclosure of which would be likely to expose that undertaking to competitive disadvantage; or

(b) information the disclosure of which would involve the unreasonable disclosure of information relating to the personal affairs of any person.

(2) The Council shall not, except in accordance with this section, disclose any information to or in relation to which this section applies.

(3) Where the Council determines that the public interest in favour of disclosure of any information to or in relation to which this section applies outweighs considerations of competitive disadvantage to an undertaking or of privacy, it may disclose that information.

(4) In making a determination under Subsection (3), the Council shall consider whether or not disclosure of the information is necessary for protecting or promoting occupational health and safety.

(5) Where the Council has determined under Subsection (3) to disclose any information, it shall give notice in writing of its determination to the person who furnished the information and, subject to Subsection (7), shall not disclose that information until the expiration of 60 days after the person has received that notice.

(6) Any person who receives a notice under Subsection (5) may, within 60 days after receiving the notice, make application to the Minister for a review of the determination of the Council.

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(7) Any person who makes application under Subsection (6) shall immediately give notice of that application to the Council and the Council upon receiving such a notice shall not disclose the information in respect of which the application is made pending the decision of the Minister.

(8) Where any provision of the *Industrial Relations Act* (Chapter 175) is inconsistent with any provision of this section, the provisions of this section prevail.

(9) Any member of the Council who discloses any information to or in relation to which this section applies in a manner that is not in accordance with this section shall be guilty of an offence against this Act.

(10) In this section -  
"disclose" means divulge or communicate to any person or publish.

**PART III. - DIRECTOR AND DEPUTY DIRECTOR.**

**21. APPOINTMENT OF DIRECTOR AND DEPUTY DIRECTOR.**

There shall be a Director and a Deputy Director of the Council who shall be appointed, by notice in the National Gazette, by the Minister.

**22. DUTIES OF THE DIRECTOR.**

The Director shall be responsible for the administration of this Act.

**23. DUTIES OF DEPUTY DIRECTOR.**

The Deputy Director shall perform such duties as the Director directs, and in the event of a vacancy in the office of the Director or his absence or inability to act the Deputy Director shall perform the duties of the Director and has and may exercise the powers and functions of the Director.

**24. CONDITIONS OF EMPLOYMENT.**

(1) Subject to this Act, the Director and Deputy Director hold office -

(a) for such periods, not exceeding four years, as are specified in the instruments of their respective appointments; and

(b) on such terms and conditions as the Minister responsible for Public Service matters determines,

and are eligible for re-appointment.

(2) The Director and Deputy Director shall be paid salaries and allowances at such rates, or in accordance with such terms and conditions as to remuneration and otherwise, as are determined by the Minister responsible for Public Service matters.

**25. RESIGNATION.**

The Director or the Deputy Director may resign his office by writing under his hand delivered to the Minister.

**26. TERMINATION OF APPOINTMENT.**

If the Director or the Deputy Director -

(a) becomes permanently incapable of performing his duties; or

(b) engages in paid employment outside the duties of his office;  
or

(c) absents himself from duty for 14 consecutive days or for 28 days in any period of 12 months, except on leave granted by the Minister; or

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- (d) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit; or
- (e) fails to comply with his obligation under Sections 22 and 23, the Minister shall terminate his appointment.

### **27. PUBLIC SERVICE RIGHTS.**

If an officer of the Public Service is appointed to be the Director or the Deputy Director, his service as the Director or the Deputy Director shall be counted as service in the Public Service for the purposes of determining his rights (if any) in respect of -

- (a) leave of absence on the grounds of illness; or
- (b) furlough, or pay in lieu (including pay to dependants or personal representatives on the death of the officer).

### **28. OATH AND AFFIRMATION OF OFFICE AND DECLARATION OF SECRECY.**

(1) Before entering on the duties of his office, a Director or Deputy Director shall make a declaration of office as set out in Schedule 2.

(2) The declaration of office shall be made before the Minister or a person appointed by the Minister for the purpose.

### **29. STAFF.**

(1) Subject to Subsection (2) and to Section 21, any staff required for the purposes of this Act, and employed by the Council, shall be deemed to be officers or employees of the Public Service.

(2) Subsection (1) does not prevent any person from being employed, on contract or otherwise, under any other law of Papua New Guinea to perform functions in relation to the office.

## **PART IV. - GENERAL PROVISIONS RELATING TO OCCUPATIONAL HEALTH AND SAFETY.**

### **30. DUTIES OF EMPLOYERS.**

(1) So far as is practicable an employer shall provide and maintain for employees a working environment that is safe and without risks to health.

(2) Without in any way limiting the generality of Subsection (1), an employer contravenes that subsection if the employer fails -

- (a) to provide and maintain plant and systems of work that are, so far as is practicable, safe and without risks to health; or
- (b) to make arrangements for ensuring, so far as is practicable, safety and absence of risks to health in connection with the use, handling, storage and transport of plant and substances; or
- (c) to maintain, so far as is practicable, any workplace under the control and management of the employer in a condition that is safe and without risks to health; or
- (d) to provide adequate facilities for the welfare of employees at any workplace under the control and management of the employer; or
- (e) to provide such information, instruction, training and supervision to employees as are necessary to enable the employees to perform their work in a manner that is safe and without risks to health.

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- (3) For the purposes of this section -
- (a) "employee" includes an independent contractor engaged by an employer and any employees of the independent contractor; and
  - (b) the duties of an employer under those subsections extend to such an independent contractor and the independent contractor's employees, in relation to matters over which the employer -
    - (i) has control; or
    - (ii) would have had control but for any agreement between the employer and the independent contractor to the contrary.
- (4) An employer shall so far as is practicable -
- (a) monitor the health of the employees of the employer; and
  - (b) keep information and records relating to the health and safety of the employees of the employer; and
  - (c) employ or engage persons who being suitably qualified in relation to occupational health and safety are able to provide advice to the employer in relation to the health and safety of the employees of the employer; and
  - (d) monitor conditions at any workplace under the control and management of the employer; and
  - (e) provide information to the employees of the employer, in such languages as are appropriate, with respect to health and safety at the workplace, including the names of persons to whom an employee may make an inquiry or complaint in relation to health and safety.

**31. DUTIES OF EMPLOYERS AND SELF-EMPLOYED PERSONS.**

Every employer and every self-employed person shall ensure, so far as is practicable, that persons (other than the employees of the employer or self-employed person) are not exposed to risks to their health, safety or welfare arising at the workplace from the conduct of the undertaking of the employer or self-employed person.

**32. DUTIES OF OCCUPIERS OF WORKPLACES.**

An occupier of a workplace shall take such measures as are practicable to ensure that the workplace and the means of access to and egress from the workplace are safe and without risks to health.

**33. DUTIES OF MANUFACTURERS, ETC.,**

- (1) A person who designs, manufactures, imports or supplies any plant for use at a workplace shall -
- (a) ensure, so far as is practicable, that the plant is so designed and constructed as to be safe and without risks to health when properly used; and
  - (b) carry out or arrange for the carrying out of such testing and examination as may be necessary for the performance of the duty imposed by Paragraph (a); and
  - (c) take such action as is necessary to ensure that there will be available in connection with the use of the plant at the workplace adequate information about the use for which it is designed and has been tested, and about any conditions necessary to ensure that when put to that use it will be safe and without risks to health.

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(2) A person who erects or installs any plant for use at a workplace shall ensure, so far as is practicable, that nothing about the way in which it is erected or installed makes it unsafe or a risk to health when properly used.

(3) A person who manufactures, imports or supplies any substance for use at a workplace shall -

- (a) ensure, so far as is practicable, that the substance is safe and without risks to health when properly used; and
- (b) carry out or arrange for the carrying out of such testing and examination as may be necessary for the performance of the duty imposed by Paragraph (a); and
- (c) take such action as is necessary to ensure that there will be available in connection with the use of the substance at the workplace adequate information about the results of any relevant tests which have been carried out on or in connection with the substance and about any conditions necessary to ensure that it will be safe and without risks to health when properly used.

(4) For the purposes of this section, any plant or substance is not to be regarded as properly used where it is used without regard to any relevant information or advice that is available relating to its use.

### **34. DUTIES OF EMPLOYEES.**

(1) An employee while at work shall take the care of which the employee is capable for the employee's own health and safety and for the health and safety of any other person who may be affected by the employee's acts or omissions at the workplace.

(2) Any employee shall not -

- (a) wilfully or recklessly interfere with or misuse anything provided in the interests of health, safety or welfare in pursuance of any provision of this Act or the regulations; or
- (b) wilfully place at risk the health or safety of any person at the workplace.

### **35. PROVISIONS FOR DEALING WITH HEALTH AND SAFETY ISSUES.**

(1) If any issue concerning health and safety arises at a workplace -  
(a) the employer or the employer's representative; and  
(b) the health and safety representative for the designated work group in relation to which the issue has arisen or, if there is no such representative, the employees in that group,  
shall attempt to resolve the issue in accordance with the relevant agreed procedure or, if there is no such procedure, the relevant prescribed procedure.

(2) Where the issue concerns work which involves a threat to the health and safety of any person and -

- (a) the threat is immediate; and
- (b) given the nature of the threat and degree of risk, it is not appropriate to adopt the processes set out in Subsection (1),  
the employer and the health and safety representative for the designated work group in relation to which the issue has arisen may, after consultation -  
(c) jointly direct; or

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(d) if the consultation does not lead to agreement between them, either of them may direct, that the work shall cease.

(3) During any period which any work has ceased pursuant to Subsection (2), the employer may assign the employee or employees to suitable alternative work.

(4) If the issue is not resolved within a reasonable time or if there has been a direction that work shall cease, any one of the parties to the attempt at resolution may require an inspector to attend at the workplace.

(5) The inspector shall attend as soon as possible and may take such action under this Act as the inspector considers necessary.

(6) If the inspector -  
(a) issues a prohibition notice; or  
(b) otherwise determines that there was reasonable cause for employees to be concerned for their health and safety, any employee who, as a result of the issue arising at the workplace, does not work for any period pending the resolution of the issue shall be entitled to be paid for that period.

(7) Any dispute in respect of an entitlement under Subsection (6) may be determined under the *Industrial Relations Act* (Chapter 175) or to such other tribunal having jurisdiction in relation to the matter.

**36. CIVIL LIABILITY NOT AFFECTED BY THIS PART.**

Nothing in this Part shall be construed as -

- (a) conferring a right of action in any civil proceedings in respect of any contravention, whether by act or omission, of any provision of this Part; or
- (b) conferring a defence to an action in any civil proceedings or as otherwise affecting a right of action in any civil proceedings; or
- (c) affecting the extent (if any) to which a right of action arises or civil proceedings may be taken with respect to breaches of duties imposed by the regulations.

**PART V. - OCCUPATIONAL HEALTH AND SAFETY REPRESENTATIVES AND COMMITTEES.**

**37. DESIGNATED WORK GROUP.**

(1) A trade union may, in respect of a workplace where one or more of its members work are employees, request the employer to negotiate with it to determine the groups of employees which shall be the designated work groups at the workplace.

(2) An employer shall personally or by a representative comply with a request under Subsection (1) within 14 days after the request.

(3) Any other union a member or members of which work as employees at the workplace shall be entitled to join the negotiations.



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(4) If the employer and the trade union or unions cannot reach agreement in their negotiations, the employer or any one of the unions may apply to the Minister for the appointment of a committee to determine the designated work groups.

(5) Any employee at a workplace where none of the employees is a member of a trade union may at any time require an inspector to attend at the workplace and to determine the groups of employees which shall be the designated work groups at the workplace.

(6) If the employer disagrees with the inspector's determination under Subsection (5), the employer may apply to the Minister for the appointment of a committee to determine the designated work groups.

(7) A committee for the purposes of Subsection (4) or (6) shall consist of three persons of whom one shall be appointed to be chairman, one shall be appointed to represent employers generally and one shall be appointed to represent employees generally.

(8) In determining the designated work groups, the employer and the trade union or unions, the inspector or the committee (as the case requires) shall have regard to -

- (a) the number of employees at the workplace; and
- (b) the nature of each type of work performed at the workplace; and
- (c) the number and grouping of employees who perform the same or similar types of work; and
- (d) the areas at the workplace where each type of work is performed; and
- (e) the nature of any hazards at the workplace; and
- (f) any overtime or shift working arrangements at the workplace.

(9) All the employees at a workplace may be determined to be one designated work group.

(10) At any time the designated work groups at a workplace may be varied through the appropriate procedure under this section.

(11) The designated work groups at a workplace shall be listed in a Schedule of Designated Work Groups, which shall be displayed in a prominent place at the workplace.

(12) If at a workplace no action has been taken under Subsection (1) and (5), the employer may initiate discussions with any trade union, a member or members of which work as employees at the workplace, or, if no employee at the workplace is a member of such a union, with any employee in order to commence negotiations under Subsection (1) or to require the attendance of an inspector under Subsection (5).

### **38. ELECTION OF HEALTH AND SAFETY REPRESENTATIVES, ETC.**

(1) Any union, a member or members of which work as employees in a designated work group, may conduct an election for a health and safety representative.

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(2) If there is a dispute between two or more trade unions as to which shall conduct an election under Subsection (1), any one of those unions may request an inspector to conduct the election.

(3) At an election under Subsection (1) or (2) -

- (a) any employee in the designated work group may be a candidate but only upon the nomination of a trade union a member or members of which work as employees in the group; and
- (b) all employees in the group shall be entitled to vote.

(4) In a designated work group where none of the employees is a member of a trade union, an inspector shall upon the request of an employee in the group conduct an election for a health and safety representative and at such an election -

- (a) any employee in the group may be a candidate upon the nomination of any other employee in the group; and
- (b) all employees in the group shall be entitled to vote.

(5) If at any election there is only one candidate -

- (a) it shall not be necessary to conduct a ballot; and
- (b) that candidate shall be the health and safety representative for the designated work group.

(6) There shall be only one health and safety representative for each designated work group.

(7) A person shall cease to be a health and safety representative upon -

- (a) ceasing to be an employee in the designated work group; or
- (b) resigning as a health and safety representative; or
- (c) the designated work group in respect of which the person was elected being varied under Section 37; or
- (d) failing to be re-elected; or
- (e) being disqualified under Section 44.

(8) A health and safety representative shall perform a function or duty under this Part only in respect of the designated work group in respect of which that health and safety representative is elected.

**39. FUNCTIONS, ETC., OF HEALTH AND SAFETY REPRESENTATIVES.**

(1) A health and safety representative may for the purpose of health and safety at a workplace -

- (a) inspect the whole or any part of the workplace -
  - (i) at any time after giving reasonable notice to the employer; and
  - (ii) immediately in the event of any accident, hazardous situation, dangerous occurrence or immediate risk to the health and safety of any person; and
- (b) accompany any inspector during an inspection of the workplace; and
- (c) require the establishment of a health and safety committee in accordance with Section 45; and
- (d) with the consent of the employee, be present at any interview between an employee and an inspector concerning health and safety.

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- (2) An employer shall -
- (a) subject to Subsection (3), permit a health and safety representative to have access to such information as the employer possesses relating to -
    - (i) actual or potential hazards arising at any workplace under the control and management of the employer, the conduct of the undertaking of the employer or the plant or substances used for the purposes of that undertaking; and
    - (ii) the health and safety of the employees of the employer; and
  - (b) subject to Subsection (5), permit a health and safety representative to be present at any interview concerning occupational health and safety between the employer or a representative of the employer and an employee; and
  - (c) consult health and safety representatives on all proposed changes to the workplace, the plant or substances used in that undertaking or the conduct of that undertaking being changes that may affect health, safety and welfare at the workplace; and
  - (d) permit health and safety representatives to take such time off work with pay as is necessary or prescribed for the purposes of performing their functions or duties or taking part in any course of training relating to occupational health and safety which is approved by the Council or conducted by the Department of Labour and Employment; and
  - (e) provide such other facilities and assistance to health and safety representatives as are necessary or prescribed to enable them to perform their functions and duties.

(3) An employer shall not pursuant to Subsection (2)(a)(ii) supply to a health and safety representative any medical information in respect of an employee unless -

- (a) the employee has consented to the supply of the information to the health and safety representative; or
- (b) the information is in a form which does not identify the employee.

(4) An employer shall not prevent or obstruct the attendance of a health and safety representative at a course of training of the type referred to in Subsection (2)(d).

(5) A health and safety representative shall not be present at any interview of a kind referred to in Subsection (2)(b) without the consent of the employee.

(6) No provision of this Act shall be construed as imposing any duty upon a health and safety representative in the capacity of health and safety representative.

**40. PROVISIONS CONCERNING ASSISTANTS OF HEALTH AND SAFETY REPRESENTATIVES.**

(1) A health and safety representative may for the purposes of performing a function or duty under this Part seek whenever necessary the assistance of any person.

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(2) An employer shall allow a person assisting a health and safety representative access to the workplace unless the employer considers that the person by reason of a lack of knowledge of occupational health and safety is not a suitable person to assist a health and safety representative.

(3) Where an employer does not allow a person assisting a health and safety representative access to the workplace, the health and safety representative may apply to the Departmental Head for an order directing the employer to allow that access and specifying the terms and conditions of that access.

**41. PROVISIONAL IMPROVEMENT NOTICES.**

(1) Where a health and safety representative is of the opinion that any person -

(a) is contravening any provision of this Act; or  
(b) has contravened such a provision in circumstances that make it likely that the contravention will continue or be repeated,  
the health and safety representative may issue to the person a provisional improvement notice requiring the person to remedy the contravention or likely contravention or the matters or activities occasioning the contravention or likely contravention.

(2) A provisional improvement notice shall -

(a) state that the health and safety representative is of the opinion that the person -  
(i) is contravening a provision of this Act; or  
(ii) has contravened such a provision in circumstances that make it likely that the contravention will continue or be repeated; and  
(b) state the reasons for the opinion; and  
(c) specify the provision in this Act in respect of which that opinion is held; and  
(d) specify the day (being a day more than seven days after the day on which the notice is issued) before which the person is required to remedy the contravention or likely contravention or the matters or activities occasioning the contravention or likely contravention.

(3) A person -

(a) to whom a provisional improvement notice is issued in relation to which an inspector has not been required under Section 43 to attend at the workplace; and  
(b) who does not comply with the provisional improvement notice,  
is guilty of an offence against this Act.

**42. PROVISIONAL NOTICES MAY INCLUDE DIRECTIONS.**

(1) A health and safety representative may include in a provisional improvement notice directions as to the measures to be taken to remedy the contravention, likely contravention, matters or activities to which the notice relates.

(2) Any direction under Subsection (1) may -

(a) refer to any approved code of practice; and  
(b) offer the person to whom it is issued a choice of ways in which to remedy the contravention, likely contravention, matters or activities.

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**43. EMPLOYER MAY REQUIRE INSPECTOR TO ATTEND AT WORKPLACE.**

(1) A person to whom a provisional improvement notice is issued or, where that person is an employee, that person's employer may within seven days after the notice is issued require an inspector to attend at the workplace.

(2) After receiving a requirement to attend at a workplace, an inspector shall so attend as soon as possible but before the day specified in the notice as being the day before which the notice shall be complied with.

(3) An inspector shall inquire into the circumstances relating to the notice and may -

- (a) affirm the notice; or
- (b) affirm the notice with such modifications as the inspector thinks fit; or
- (c) cancel the notice.

(4) Where an inspector has affirmed a notice with or without modifications, the notice as so affirmed shall be deemed to be a notice issued by the inspector under Section 50.

**44. DISQUALIFICATION OF HEALTH AND SAFETY REPRESENTATIVES.**

(1) Any employer may apply to the Council to have a health and safety representative disqualified on the grounds that -

- (a) the health and safety representative has performed any function or duty under this Part with the intention only of causing harm to the employer or the employer's undertaking; or
- (b) the health and safety representative has issued a provisional improvement notice to the employer or an employee of the employer in circumstances where the representative could not reasonably have held the opinion referred to in Section 40 and the health and safety representative intended to cause harm to the employer or the employer's undertaking; or
- (c) the health and safety representative has used any information, acquired from the employer by the representative, for a purpose which is not connected with the performance of any function or duty under this Part and the health and safety representative intended to cause harm to the employer or the employer's undertaking.

(2) Where the Council is satisfied that a health and safety representative has acted in the manner referred to in Subsection (1) it may disqualify the health and safety representative for a specified period or permanently.

(3) For the purpose of determining what (if any) action it should take under Subsection (2), the Council shall take into account -

- (a) what (if any) harm was caused to the employer or the employer's undertaking by or as a result of the action of the health and safety representative; and
  - (b) the past record of the health and safety representative in performing any functions and duties under this Part; and
  - (c) whether the action of the health and safety representative was contrary to the public interest,
- and may take into account any other matters it considers relevant.

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### 45. HEALTH AND SAFETY COMMITTEES.

(1) Upon being requested to do so by a health and safety representative or when required by a provision of this Act, an employer shall, within three months after the date of the request, establish a health and safety committee in accordance with this section.

(2) Where an employer has been requested by a health and safety representative to establish a health and safety committee, the employer shall consult with the health and safety representative as to the composition and functions of the committee.

(3) At least half of the members for the time being of a health and safety committee shall be employees.

(4) The functions of a health and safety committee are -

(a) to facilitate co-operation between an employer and the employees of the employer in instigating, developing and carrying out measures designed to ensure the health and safety at work of the employees; and

(b) to formulate, review and disseminate (in such languages as are appropriate) to the employees the standards, rules and procedures relating to health and safety which are to be carried out or complied with at the workplace,

and include such other functions as are prescribed or agreed upon by the employer and the health and safety committee.

(5) Subject to this section, health and safety committees shall meet at intervals not exceeding three months.

(6) Half of the members of a health and safety committee may require a meeting of the committee to be held at any time.

(7) Subject to this Act, a health and safety committee may regulate its own procedures.

### PART VI. - INSPECTIONS.

### 46. APPOINTMENT OF INSPECTORS.

(1) Subject to the *Public Services (Management) Act* 1986, the Minister shall, acting with the advice of the Council, appoint such inspectors as are necessary for the purposes of this Act.

(2) The Minister shall furnish every inspector with a certificate of appointment which an inspector shall produce on demand to the occupier, employer or other person in charge of any workplace which the inspector intends to enter or enters pursuant to this Act.

### 47. POWERS OF INSPECTORS.

(1) An inspector may for the purpose of the execution of this Act -

(a) enter, inspect and examine at all reasonable times by day or night any workplace which the inspector considers it necessary to enter, inspect and examine for that purpose; and

(b) enter any workplace at any time when the inspector is under this Act requested or required to attend at the workplace; and

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- (c) take such equipment or materials as may be required for the purpose; and
- (d) make such examination and inquiry as may be necessary to ascertain whether or not this Act is being complied with; and
- (e) examine any plant, substance or other thing whatsoever at the workplace; and
- (f) take or remove without payment such samples of any such substance or things as may be required for analysis; and
- (g) take possession of any such plant or thing for further examination or testing or for use as evidence; and
- (h) take photographs or measurements or make sketches or recordings; and
- (i) require the production of or examine and take copies of any document or any part of any document; and
- (j) direct that the workplace or any part of the workplace be left undisturbed for as long as the inspector considers necessary; and
- (k) exercise such other powers as may be necessary or as are conferred upon the inspector by this Act.

(2) An inspector may for the purposes of Subsection (1) seek whenever necessary the assistance of any person and the occupier of or employer at a workplace shall permit any such person access to the workplace.

**48. FURTHER PROVISIONS IN RELATION TO INSPECTIONS.**

(1) Upon entering any workplace an inspector shall take all reasonable steps to notify the employer and any health and safety representative of the entry.

(2) Upon concluding an inspection an inspector shall give to the employer and any health and safety representative or, if there is no such representative, the health and safety committee information with respect to the inspector's observations and any action the inspector proposes to take in relation to the workplace.

(3) Where an inspector proposes to take and remove a sample from any workplace for the purposes of analysis the inspector shall so notify the employer and any health and safety representative or, if there is no such representative, the health and safety committee and after having taken the sample the inspector shall

- (a) divide the sample taken into as many parts as are necessary and mark and seal or mark and fasten up each part in such manner as its nature will permit; and
- (b) if required by the employer, representative or committee, deliver one part each to the employer, representative or committee; and
- (c) retain one part for future comparison, and if it is determined that an analysis of the sample is to be made the inspector shall submit another part to an analyst for analysis.

(4) Where under Section 46(1)(g) an inspector takes possession of any plant or thing, the occupier of or employer at the workplace may appeal against that seizure by notice in writing given to the inspector.

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(5) A tribunal, established for the purpose under the *Industrial Relations Act* (Chapter 174), shall determine an appeal under Subsection (4) and may -

- (a) affirm the seizure; or
- (b) order that the plant or thing be returned to the occupier or employer (as the case requires) and give directions for that return.

(6) Where under Section 47(1)(h) an inspector takes photographs or makes sketches or recordings the inspector shall forthwith notify the employer and any health and safety representative of that fact and the address of a place where the photographs, sketches or recordings are or will be available for inspection.

(7) Where an inspector uses the assistance of an interpreter, any inquiry or requisition to any person made on behalf of such inspector by the interpreter shall for all purposes be deemed to have been actually made by the inspector, and any answer thereto made to the interpreter shall be deemed to have been actually made to the inspector.

(8) No person shall be required under Section 47 to answer any question or give any evidence tending to self incrimination.

**49. EMPLOYERS, ETC., TO ASSIST INSPECTOR.**

The owner or occupier of or employer at any workplace and the agents and employees of the owner, occupier or employer shall provide such assistance as an inspector may require for any entry, inspection, examination or inquiry or for the exercise of the powers of the inspector under this Act.

**50. OFFENCES IN RELATION TO INSPECTIONS.**

(1) A person who -

- (a) refuses access to a workplace to an inspector or person assisting an inspector; or
  - (b) obstructs an inspector in the exercise of the powers of the inspector under this Act or induces or attempts to induce any other person to do so; or
  - (c) fails to produce any document required under this Act by an inspector; or
  - (d) conceals the location or existence of any other person or any plant or substance from an inspector; or
  - (e) prevents or attempts to prevent any other person from assisting an inspector; or
  - (f) in any other way, hinders impedes or opposes an inspector in the exercise of the powers of the inspector under this Act,
- is guilty of an offence.

(2) The occupier of or employer at any workplace at which an offence under Subsection (1) occurs shall be guilty of the same offence unless the occupier or employer proves that the act or omission constituting the offence took place without his knowledge and that he did not know and could not reasonably have known thereof.

(3) A person who assaults or directly or indirectly intimidates or threatens or attempts to intimidate or threaten an inspector or a person assisting an inspector is guilty of an offence.



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- (4) A person who is guilty of an offence against this section is liable -
- (a) where that person is a body corporate, to a fine not exceeding K10,000.00; or
  - (b) in any other case, to a fine of not less than K2,000.00 or to imprisonment for not more than five years or both.

**PART VII. - IMPROVEMENT AND PROHIBITION NOTICES.**

**51. INSPECTOR MAY ISSUE IMPROVEMENT NOTICE.**

(1) Where an inspector is of the opinion that any person -

- (a) is contravening any provision of this Act; or
- (b) has contravened such a provision in circumstances that make it likely that the contravention will continue or be repeated,

the inspector may issue to the person an improvement notice requiring the person to remedy the contravention or likely contravention or the matters or activities occasioning the contravention or likely contravention.

(2) An improvement notice shall -

- (a) state that the inspector is of the opinion that the person -
  - (i) is contravening a provision of this Act; or
  - (ii) has contravened such a provision in circumstances that make it likely that the contravention will continue or be repeated; and
- (b) state the reasons for that opinion; and
- (c) specify the provision in this Act in respect of which that opinion is held; and
- (d) specify the day (being a day more than seven days after the day on which the notice is issued) before which the person is required to remedy the contravention or likely contravention or the matters or activities occasioning the contravention or likely contravention.

(3) A person -

- (a) to whom an improvement notice is issued in relation to which an appeal has not been made under Section 54; and
  - (b) who does not comply with the improvement notice,
- is guilty of an offence against this Act.

**52. INSPECTOR MAY ISSUE PROHIBITION NOTICE.**

(1) Where an inspector is of the opinion that at any workplace there is occurring or may occur any activity which involves or will involve an immediate risk to the health and safety of any person, the inspector may issue to the person who has or may be reasonably presumed to have control over the activity a prohibition notice prohibiting the carrying on of the activity until an inspector certifies in writing that the matters which give or will give rise to the risk are remedied.

(2) A prohibition notice shall -

- (a) state that the inspector is of the opinion that in the workplace there is occurring or may occur an activity which involves or will involve an immediate risk to the health and safety of any person; and
- (b) state the reasons for that opinion; and

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- (c) specify the activity which in the inspector's opinion involves or will involve the risk and the matters which give or will give rise to the risk; and
  - (d) where in the inspector's opinion the activity involves a contravention or likely contravention of any provision of this Act, specify that provision and state the reasons for that opinion.
- (3) A person -
- (a) to whom a prohibition notice is issued in relation to which an appeal has not been made under Section 54; and
  - (b) who does not comply with the prohibition notice, is guilty of an offence against this Act and is liable -
  - (c) where that person is a body corporate, to a fine of not less than K10,000.00; or
  - (d) in any other case, to a fine of not less than K2,000.00 or to imprisonment for not more than five years or both.
- (4) Where an appeal has been made under Section 54, an inspector shall not give a certificate under Subsection (1) until after the appeal is withdrawn or determined.

**53. NOTICES MAY INCLUDE DIRECTIONS.**

- (1) An inspector may include in -
- (a) an improvement notice; or
  - (b) a prohibition notice,
- directions as to the measures to be taken to remedy any -
- (c) contravention; or
  - (d) likely contravention; or
  - (e) risk; or
  - (f) matters; or
  - (g) activities,
- to which the notice relates.
- (2) Any direction under Subsection (1) may -
- (a) refer to any approved code of practice; and
  - (b) offer the person to whom it is issued a choice of ways in which to remedy the -
  - (i) contravention; or
  - (ii) likely contravention; or
  - (iii) risk; or
  - (iv) matters; or
  - (v) activities.

**54. APPEALS AGAINST NOTICES.**

- (1) If -
- (a) an improvement notice; or
  - (b) a prohibition notice,
- is issued, where that person is an employee, that person's employer may within seven days after the notice is issued appeal in writing against the notice to the Minister.

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(2) The Minister shall cause an inquiry into the circumstances relating to the notice under Division II.2 of the *Industrial Relations Act* (Chapter 174) and the Board established for that purpose may -

- (a) affirm the notice; or
- (b) affirm the notice with such modification as it deems fit; or
- (c) cancel the notice.

(3) Pending the decision under Subsection (2) of the Board, the operation of the notice shall -

- (a) in the case of an improvement notice, be suspended; and
- (b) in the case of a prohibition notice, continue, subject to any decision to the contrary made by the Board under Subsection (2).

(4) Where -

- (a) the Board affirms an improvement notice or a prohibition notice or affirms such a notice with modifications; and
- (b) the person to whom the improvement notice or prohibition notice was issued does not comply with the notice as so affirmed,

that person is guilty of an offence against this Act.

Penalty: A fine not exceeding K10,000.00.

**PART VIII. - LEGAL PROCEEDINGS.**

**55. GENERAL.**

(1) A person who contravenes or fails to comply with any provision of the Act is guilty of an offence against this Act.

(2) Any person who is guilty of an offence against this Act for which no penalty is expressly provided is liable to a fine of not less than -

- (a) where the person is a body corporate, K10,000.00; or
- (b) in any other case, K500.00.

(3) An offence against this Act (not being a contravention of or failure to comply with a provision of the regulations) is an indictable offence.

**56. PROCEEDINGS MAY BE BROUGHT BY INSPECTORS, ETC.**

(1) Proceedings for an offence against this Act shall be brought by the Minister or an inspector.

(2) No proceedings for an offence against this Act shall be brought by an inspector without the authority in writing of the Minister given generally or in any particular case.

(3) An authority under Subsection (2) shall be sufficient authority to continue proceedings in any case where the Court amends the information, warrant or summons.

(4) An inspector may conduct before the Court any proceedings brought by him.

(5) The Minister shall issue to inspectors guidelines with respect to the prosecution of offences generally, but shall not issue guidelines or give directions in relation to any particular prosecution.

(6) Any guidelines issued by the Minister under Subsection (5) shall be published in the National Gazette.

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### **57. PROCEDURE WHERE PROSECUTION IS NOT BROUGHT.**

(1) Where in any particular case a prosecution has not been brought within six months after the occurrence of any act, matter or thing which in the opinion of any person constitutes an offence against this Act, the person may in writing request the Minister to bring a prosecution and the Minister shall respond in writing to such a request within three months after the request is made indicating whether a prosecution has been or will be brought or giving reasons why a prosecution will not be brought.

(2) Where under Subsection (1) the Minister has indicated that a prosecution will not be brought, the Minister shall upon a written request from the person who made the request under Subsection (1) refer the matter to the Public Prosecutor.

(3) The Public Prosecutor shall consider the matter and shall advise the Minister whether or not in the Prosecutor's opinion a prosecution should be brought and the Minister shall cause a copy of that advice to be sent to the person who made the request under Subsection (1).

### **58. JUDICIAL NOTICE OF SIGNATURE OF MINISTER, ETC.**

All Courts shall take judicial notice of the signature of the Minister or the Director on every document authorized or required to be signed by the Minister or the Director for the purposes of this Act.

### **59. OFFENCES BY BODIES CORPORATE.**

(1) Where an offence against this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any wilful neglect on the part of, an officer of the body corporate or person purporting to act as such an officer, that officer or person is also guilty of that offence and liable to the penalty for that offence.

(2) When in any proceedings under this Act it is necessary to establish the intention of a body corporate it is sufficient to show that a servant or agent of the body corporate had that intention.

(3) In Subsection (1), "officer" in relation to a body corporate means -  
(a) a director, secretary or executive officer of the body corporate; or  
(b) any person in accordance with whose directions or instructions the directors of the body corporate are accustomed to act; or  
(c) a person concerned in the management of the body corporate.

### **60. FURTHER PENALTY FOR WILFUL REPETITION OF OFFENCE.**

Where the court is satisfied that a person who is guilty of an offence against this Act -

(a) has previously been convicted of the same offence; and  
(b) has on the present occasion wilfully repeated the act or omission constituting the offence,

the court shall in addition to the penalty it imposes for the offence impose a further penalty of -

(i) in the case of a body corporate, a fine not less than K10,000.00; or  
(ii) in any other case, a fine not less than K500.00 or both.

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PART IX. - GENERAL.

61. DISCRIMINATION AGAINST EMPLOYEES, ETC.

(1) An employer shall not dismiss an employee or injure an employee in the employment of the employer or alter the position of an employee to the detriment of the employee by reason only that the employee -

- (a) is or has been a health and safety representative or member of a health and safety committee; or
- (b) performs or has performed any function or duty as such a representative or member; or
- (c) assists or has assisted or gives or has given any information to an inspector, health and safety representative or health and safety committee; or
- (d) makes or has made a complaint in relation to health and safety to the employer, a fellow employee, inspector, health and safety representative or health and safety committee.

(2) An employer or prospective employer shall not refuse or deliberately omit to offer employment to a prospective employee or treat a prospective employee less favourably than another prospective employee would be treated in relation to the terms on which employment is offered by reason only that the first-mentioned prospective employee -

- (a) has been a health and safety representative or member of a health and safety committee; or
- (b) has performed any function or duty as such a representative or member; or
- (c) has assisted or given information to an inspector, health and safety representative or health and safety committee; or
- (d) has made a complaint in relation to health and safety to a former employer, former fellow employee, inspector, health and safety representative or health and safety committee.

(3) A person who is guilty of an offence against this section is liable -

- (a) where that person is a body corporate, to a fine of not less than K10,000.00; or
- (b) in any other case, to a fine of not less than K500.00 or to imprisonment for a period of in excess of five years or both.

(4) Where a person is convicted of an offence against this section, the court may, in addition to imposing a penalty upon the offender, make -

- (a) an order that the offender pay within a specified period to the person against whom the offender discriminated such damages as it thinks fit to compensate that person; or
- (b) an order that the employee be reinstated or re-employed in the employee's former position or, where that position is not available, in a similar position or that the prospective employee be employed in the position for which the prospective employee had applied or a similar position.

62. CODES OF PRACTICE.

(1) For the purposes of providing practical guidance to employers, self-employed persons and employees, the Minister may upon the recommendation of the Council approve any code of practice.

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(2) A code of practice may consist of any code, standard, rule, specification or provision relating to occupational health or safety formulated prepared or adopted by the Council and may apply, incorporate or refer to any document formulated or published by any body or authority as in force at the time the code of practice is approved or as amended formulated or published from time to time.

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

(4) The Minister shall cause to be published in the National Gazette notices of -

- (a) the approval of a code of practice; and
- (b) the approval of a revision of the whole or any part of a code of practice; and
- (c) the revocation of approval of a code of practice.

(5) The Minister shall cause a copy -

- (a) of every approved code of practice; and
- (b) where an approved code of practice has been revised and that revision has been approved, of every approved code of practice as so revised; and
- (c) where an approved code of practice applies, incorporates or refers to any other document, of every such document,

to be made available for inspection by members of the public without charge at the office of the Department of Labour and Employment during normal office hours.

(6) An approved code of practice shall come into effect -

- (a) on the day on which notice of approval of the code of practice is published in the National Gazette or on such later day as may be specified in the notice; and
- (b) where the code of practice has been revised in whole or in part, to the extent of that revision on the day on which notice of approval of that revision is published in the National Gazette or on such later day as may be specified in the notice.

(7) An approved code of practice shall cease to be of effect at the end of the day on which notice of the revocation of approval of the code of practice is published in the National Gazette.

(8) A person shall not be liable to any civil or criminal proceedings by reason only that the person has failed to observe any provision of an approved code of practice.

### **63. USE OF CODES OF PRACTICE IN PROCEEDINGS.**

Where in any proceeding under this Act it is alleged that a person contravened or failed to comply with a provision of this Act in relation to which an approved code of practice was in effect at the time of the alleged contravention or failure -

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

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

### **64. MINISTER MAY DELEGATE POWERS, ETC.**

The Minister may delegate to any person all or any of his powers, authorities, duties or functions under this Act other than this power of delegation.

### **65. DUTIES OF THE MINISTER WITH RESPECT TO REGULATIONS.**

Except in the case of regulations which the Minister considers should be made as soon as practicable in the public interest, the Minister shall consult with the Council on any regulations proposed to be made before those regulations are made.

## **PART X. - MISCELLANEOUS.**

### **66. SAVINGS.**

(1) Subject to this section the provisions of this Act shall be in addition to and not in derogation of any provision of any other law relating to or affecting occupational health, safety and welfare with respect to which this Act applies.

(2) In the case of any inconsistency between this Act and any other law relating to or affecting occupational health, safety and welfare referred to in Subsection (1) the provisions of this Act prevail.

(3) Subject to this section every declaration, order, rule, registration, regulation, notice, permit, certificate, approval, request, requirement mark, agreement or modification thereof, or other act of authority made, issued, given or done under any other Act relating to or affecting occupational health, safety and welfare, and in force immediately prior to the commencement of this section shall continue in force for the purposes of this Act as if it had been made, issued, given or done under this Act until it expires by effluxion of time or is repealed, amended or otherwise, modified, revoked, cancelled or suspended under this Act, but shall be read and construed subject to this Act.

### **67. TRANSITIONAL POWERS, ETC., OF DIRECTOR AND DEPUTY DIRECTOR.**

(1) Notwithstanding anything in this Act the duties, powers and functions of the Director and Deputy Director shall be performed by Gemvale Pty. Ltd., (a company incorporated in Papua New Guinea) for the first three years of the operation of this Act.

(2) The Minister shall extend the period referred to in Subsection (1) if in the opinion of the Minister the administration of this Act has not been satisfactorily effected.

(3) The extension of the period referred to in Subsection (2) shall not exceed two years.

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(4) The terms and conditions of employment of the Director and Deputy Director under this section shall be as determined by the Minister.

**68. REGULATIONS.**

The Head of State, acting on advice, may make regulations not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular for prescribing the matters specified in Schedule 1.



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SCHEDULES.

SCHEDULE 1.

Subject matter for Regulations.

1. Regulating or prohibiting -
  - (a) the manufacture, supply or use of any plant; and
  - (b) the manufacture, supply, storage, transport or use of any substance; and
  - (c) the carrying on of any process or the carrying out of any operation.
2. Regulating the design, guarding, siting, construction, installation, bringing into operation, examination, repair, maintenance, alteration, adjustment, dismantling or testing of any plant.
3. Requiring employers or other prescribed persons at such times and in such manner as are prescribed to examine, test, dismantle, repair, alter or adjust any plant.
4. Regulating the examination, testing, analysis, labelling or marking of any substance.
5. Requiring employers or other prescribed persons at such times and in such manner as are prescribed to examine, test, analyse, label or mark any substance.
6. Regulating the siting, examination, repair, alteration, adjustment, dismantling, maintenance, care or use of an the conditions at any workplace.
7. Inspections by inspectors.
8. Requiring any plant, substance or workplace to be registered or licensed by the Minister or by any other prescribed person or body of persons.
9. Prohibiting the use of any plant, substance or workplace unless it is registered or licensed.
10. Prescribing the persons who may apply for registration of or any licence in respect of any plant substance or workplace.
11. Prescribing the terms and conditions of registration of any plant substance or workplace or of any licence in in respect of any plant substance or workplace.
12. Prescribing the circumstances in which registration of or any licence in respect of any plant, substance or workplace may be cancelled or suspended.
13. Providing for the variation of the terms and conditions of registration of or any licence in respect of any plant, substance or workplace.
14. Prescribing the manner of application for the granting, renewal or transfer of registration of or any licence in respect of any plant, substance or workplace.

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Schedule 1 (Cont...d)

15. Prohibiting the carrying on of prescribed activities at workplaces or the performance of prescribed work at workplaces except under the supervision of or by persons with prescribed qualifications or experience.
16. Requiring the holding of certificates of competency by persons engaged in prescribed work or activities.
17. Providing for the examination of applicants for certificates of competency.
18. Requiring applicants for certificates of competency to possess prescribed qualifications or experience.
19. Providing for the recognition of prescribed qualifications or experience held by applicants for certificates of competency in lieu of those applicants passing and examination for such certificates.
20. Prescribing the terms and conditions upon which certificates of competency may be granted.
21. Providing for the variation of the terms and conditions of any certificate of competency.
22. Prescribing the circumstances in which certificates of competency may be cancelled or suspended.
23. Prescribing the manner of application for granting or renewal of certificates of competency.
24. Providing for the establishment of Boards of Examiners to conduct examinations of applications for certificates of competency.
25. Providing for the composition of any Board of Examiners, the terms and conditions of membership of such a Board and the fees and travelling allowances to be paid to the members of such a Board.
26. Providing for the procedures of any Board of Examiners.
27. Conferring upon any Board of Examiners the power to grant or renew, refuse to grant or renew, cancel or suspend any certificate of competency.
28. Requiring in prescribed circumstances employers to employ or appoint persons, whether or not persons with prescribed qualifications or experience, to perform prescribed functions and imposing duties or conferring powers on such persons.
29. Regulating or prohibiting the employment in prescribed activities or work of all persons or any class of persons.
30. Regulating or requiring the instruction training and supervision of persons at work.

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Schedule 1 (Cont....d)

31. Requiring employers to bring to the notice of their employees such of the provisions of this Act or the regulations as are prescribed.
32. Regulating or requiring the taking of any action or precautions to avoid, or in the event of, any accident or dangerous occurrence.
33. Prohibiting or requiring the taking of any action in the event of any accident or dangerous occurrence.
34. Regulating or requiring in prescribed circumstances the provision and use of protective clothing or equipment and rescue equipment.
35. Prescribing standards in relation to the use of, including standards of exposure to, any physical biological chemical or psychological hazard.
36. Regulating or requiring the monitoring by employers or occupiers of conditions at ay workplace.
37. Regulating or requiring the monitoring by employers of the health of their employees.
38. Regulating or requiring the provision by employers or occupiers of prescribed facilities for the welfare of persons at the workplace.
39. Requiring the keeping and preservation by employers or other prescribed persons of records of prescribed activities matters or things.
40. Requiring notice to be given of prescribed activities matters or things to the Minister, an inspector or other prescribed persons.
41. Regulating the conduct of elections for health and safety representatives.
42. Requiring employers to establish health and safety committees and regulating such committees and committees under Section 37.
43. Prescribing the fees chargeable or payable for doing any act or providing any service for the purposes of the regulations.
44. Prescribing the manner of serving notices under this Act.
45. Prescribing forms for the purposes of this Act and the regulations.
46. Providing for contravention of or failure to comply with a provision of a regulation to be an indictable offence or a summary offence.
47. Prescribing penalties for any contravention of or failure to comply with the regulations not exceeding in the case of a body corporate 250 penalty units and in any other case 50 penalty units.
48. Prescribing any matter or things which by this Act is required or permitted to be prescribed for the purposes of this Act.

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Schedule 2.

Secs. 10, 28.

O A T H.

I, -----, swear that I will well and truly serve the Independent State of Papua New Guinea as an appointed member (or in the office of the Director or Deputy Director) of the Occupational Health and Safety Council.

So Help me God!

A F F I R M A T I O N

I, -----, solemnly and sincerely declare that I will well and truly serve the Independent State of Papua New Guinea as an appointed member (or in the office of the Director or Deputy Director) of the Occupational Health and Safety Council.

I hereby certify that the above is a fair print of the *Occupational Health, Safety and Welfare Act 1991* which has been made by the National Parliament.

Clerk of the National Parliament.

I hereby certify that the *Occupational Health, Safety and Welfare Act 1991* was made by the National Parliament on 27 November 1991.

Speaker of the National Parliament.