

**OCCUPATIONAL HEALTH AND SAFETY LEGISLATION
(AMENDMENT) ACT 1994 No. 5**

NEW SOUTH WALES



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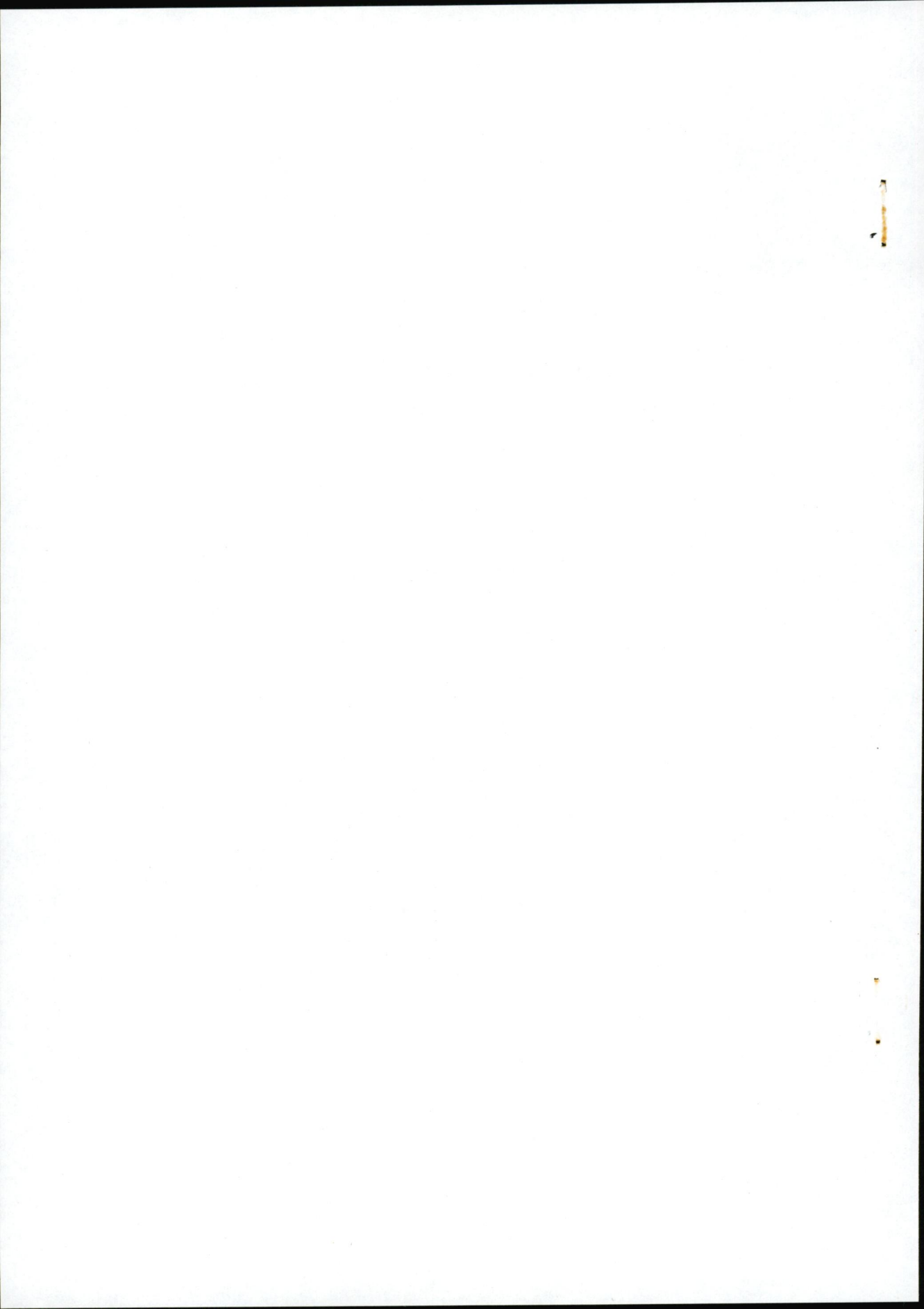
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**OCCUPATIONAL HEALTH AND SAFETY LEGISLATION
(AMENDMENT) ACT 1994 No. 5**

NEW SOUTH WALES



Act No. 5, 1994

An Act to amend the Occupational Health and Safety Act 1983 and certain other associated occupational health and safety legislation with respect to the appointment and powers of inspectors; to transfer to the WorkCover Authority certain functions exercised by Chief Inspectors; and for other purposes. [Assented to 2 May 1994]

See also Workers Compensation Legislation (Miscellaneous Amendments) Act 1994.

Occupational Health and Safety Legislation (Amendment) Act 1994 No. 5

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Occupational Health and Safety Legislation (Amendment) Act 1994.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Occupational Health and Safety Act 1983 No. 20

3. The Occupational Health and Safety Act 1983 is amended as set out in Schedule 1.

Amendment of Construction Safety Act 1912 No. 38

4. The Construction Safety Act 1912 is amended as set out in Schedule 2.

Amendment of Factories, Shops and Industries Act 1962 No. 43

5. The Factories, Shops and Industries Act 1962 is amended as set out in Schedule 3.

Amendment of Dangerous Goods Act 1975 No. 68

6. The Dangerous Goods Act 1975 is amended as set out in Schedule 4.

Amendment of Search Warrants Act 1985 No. 37

7. The Search Warrants Act 1985 is amended by omitting from the definition of "search warrant" in section 10 the matter "section 30A of the Occupational Health and Safety Act 1983" and by inserting instead the matter "section 31H of the Occupational Health and Safety Act 1983".

SCHEDULE 1—AMENDMENT OF OCCUPATIONAL HEALTH AND SAFETY ACT 1983

(Sec. 3)

(1) Section 4 (**Definitions**):

In section 4 (1), insert in alphabetical order:

“inspector” means an inspector appointed under Division 4 of Part 3;

(2) Section 18 (**Manufacturers, suppliers etc. to ensure health and safety as regards plant and substances for use at work**):

From section 18 (10), omit “Consumer Protection Act 1969”, insert instead “Fair Trading Act 1987”.

(3) Section 22 (**Civil liability not affected by this Division**):

(a) From section 22 (b), omit “or” where lastly occurring.

(b) After section 22 (c), insert:

; or

(d) as affecting the extent (if any) to which the breach of a duty imposed by or under the regulations is actionable.

(c) At the end of section 22, insert:

(2) Despite subsection (1) (a), if the operation of a provision of this Division has been adapted by a regulation made under section 46 to meet the circumstances of any specified class of case, nothing in this Division is taken to affect the extent (if any) to which the breach of a duty imposed by the adapted provision is actionable in relation to any such case.

(4) Part 3, Division 4:

Omit the Division, insert instead:

Division 4—Appointment and powers of inspectors**Definitions**

29. In this Division:

“occupier” includes a person for the time being having (or appearing to have) the charge, management or control of premises or a person who, for the time being, is in charge (or appears to be in charge) of any operation being conducted on the premises;

SCHEDULE 1—AMENDMENT OF OCCUPATIONAL HEALTH
AND SAFETY ACT 1983—*continued*

“**relevant legislation**” means the provisions of this Act, the Construction Safety Act 1912 and the Factories, Shops and Industries Act 1962 (other than Parts 4 and 6) and regulations made under those provisions.

Application of Division

30. This Division does not apply to a mine within the meaning of the Mines Inspection Act 1901 or the Coal Mines Regulation Act 1982.

Appointment of inspectors

31. The WorkCover Authority may appoint as inspectors for the purposes of the relevant legislation any of the following persons:

- (a) a statutory officer;
- (b) a public servant;
- (c) a person employed by a public or local authority;
- (d) a person belonging to a class of persons prescribed by the regulations.

Powers of entry for places of work

31A. For the purposes of the relevant legislation, an inspector may enter any premises the inspector has reason to believe is a place of work.

Notice of entry

31B. (1) An inspector authorised to enter premises under this Division may enter premises without giving notice:

- (a) if entry to the premises is made with the consent of the occupier; or
- (b) if entry is required urgently and the WorkCover Authority has authorised in writing (either generally or in a particular case) entry without notice; or
- (c) if giving notice would defeat the purpose for which it is intended to exercise the power of entry.

(2) In all other circumstances, the WorkCover Authority must give the occupier of the premises reasonable notice of the intention to enter premises.

SCHEDULE 1—AMENDMENT OF OCCUPATIONAL HEALTH
AND SAFETY ACT 1983—*continued*

Authority to enter premises

31C. (1) A power conferred by this Division to enter premises, or to make an inspection or take other action on premises, may not be exercised unless the person proposing to exercise the power is in possession of an authority and produces the authority if required to do so by the occupier of the premises.

(2) The authority must be a written authority that is issued by the WorkCover Authority and that:

- (a) states that it is issued under this Act; and
- (b) gives the name of the person to whom it is issued; and
- (c) describes the nature of the powers conferred and the source of the powers; and
- (d) states the date (if any) on which it expires; and
- (e) describes the kind of premises to which the power extends; and
- (f) bears the signature of the General Manager of the WorkCover Authority or an officer approved by the General Manager for the purposes of this paragraph.

(3) Entry may only be made at a reasonable time in the daytime or at any hour when work is carried on or is usually carried on.

(4) This section does not apply to a power conferred by a search warrant.

Use of force on entry

31D. (1) Reasonable force may be used for the purpose of gaining entry to premises (other than domestic premises) under a power conferred by this Division, but only if authorised by the WorkCover Authority in accordance with this section or in cases of emergency.

(2) The authority of the WorkCover Authority:

- (a) must be in writing; and
- (b) must be given in respect of the particular entry concerned; and
- (c) must specify the circumstances that are required to exist before force may be used.

SCHEDULE 1—AMENDMENT OF OCCUPATIONAL HEALTH
AND SAFETY ACT 1983—*continued*

(3) This section does not apply to a power conferred by a search warrant and does not affect section 17 of the Search Warrants Act 1985 (Use of force to enter premises etc.).

Notification of use of force on entry

31E. (1) An inspector authorised to enter premises under this Division who uses force for the purpose of gaining entry to the premises must promptly advise the WorkCover Authority of the use of force.

(2) The WorkCover Authority must give written notice of the entry to such persons or authorities as appear to the Authority to be appropriate in the circumstances.

Compensation

31F. The WorkCover Authority must pay compensation for any loss or damage caused by any inspector in the exercise of any power to enter premises under this Division, but not if that loss or damage is caused because the occupier obstructed, hindered or restricted the inspector in the exercise of the power of entry.

Entry to domestic premises

31G. The powers of entry conferred by this Division are not exercisable in relation to domestic premises except:

- (a) with the permission of the occupier of the premises; or
- (b) under the authority conferred by a search warrant.

Search warrant

31H. (1) An inspector may apply to an authorised justice for a search warrant if the inspector has reasonable grounds for believing that a provision of the relevant legislation has been or is being or is about to be contravened in or about any premises.

(2) An authorised justice to whom an application is made under this section may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising the inspector named in the warrant to enter the premises and to search the premises for evidence of a contravention of the relevant legislation.

SCHEDULE 1—AMENDMENT OF OCCUPATIONAL HEALTH
AND SAFETY ACT 1983—*continued*

(3) Part 3 of the Search Warrants Act 1985 applies to a search warrant issued under this section.

(4) In this section, “**authorised justice**” has the same meaning as it has in the Search Warrants Act 1985.

Powers available on entry

31I. For the purposes of the relevant legislation, an inspector who enters premises under this Division may do any of the following:

- (a) make searches, inspections, examinations and tests (and take photographs);
- (b) take for analysis a sample of any substance or thing which in the inspector’s opinion may be, contain or be contaminated by, a substance (or a degradation product of a substance) prescribed by the regulations;
- (c) in the case of an inspector who is a medical practitioner, carry out medical examinations with the consent of the person proposed to be examined;
- (d) carry out biological tests in such manner and in such circumstances as may be prescribed by the regulations;
- (e) require any person in or about those premises to answer questions or otherwise furnish information;
- (f) require the occupier of those premises to provide the inspector with such assistance and facilities as is or are reasonably necessary to enable the inspector to exercise the inspector’s functions;
- (g) require the production of and inspect any records in or about those premises;
- (h) take copies of or extracts from any such records;
- (i) exercise all other functions that are conferred by or are reasonably necessary for the purposes of the relevant legislation.

SCHEDULE 1—AMENDMENT OF OCCUPATIONAL HEALTH
AND SAFETY ACT 1983—*continued*

Care to be taken

31J. In the exercise of a function under this Division, an inspector must do as little damage as possible.

Inspector may request assistance

31K. (1) A police officer may accompany and take all reasonable steps to assist an inspector in the exercise of the inspector's functions under this Division:

- (a) in executing a search warrant issued under section 31H; or
- (b) if the inspector reasonably believes that he or she may be obstructed in the exercise of those functions.

(2) Any person whom an inspector believes to be capable of providing assistance in the exercise of the inspector's functions under this Division may accompany the inspector and take all reasonable steps to assist the inspector in the exercise of the inspector's functions.

(3) Nothing in subsection (1) is to be taken to limit the generality of section 18 of the Search Warrants Act 1985.

Attendance of inspector at coronial inquest

31L. An inspector may attend and has authority to examine witnesses at any inquest into the cause of death of any employee while employed at a place of work.

Protection from incrimination

31M. (1) A person is not excused from making a statement in accordance with a requirement under this Division on the ground that the statement may tend to incriminate the person.

(2) However, the statement is not admissible in evidence against a person in criminal proceedings (except proceedings for an offence under section 31N):

- (a) if the person claims before making the statement that the statement might tend to incriminate the person; or
- (b) unless the person's entitlement to make a claim of the kind referred to in paragraph (a) was drawn to the person's attention before the statement was made.

SCHEDULE 1—AMENDMENT OF OCCUPATIONAL HEALTH
AND SAFETY ACT 1983—*continued*

Offence: obstructing an inspector or others

31N. A person must not:

- (a) obstruct, hinder or impede an inspector in the exercise of the inspector's functions under this Division; or
- (b) prevent or attempt to prevent any other person from assisting an inspector in the exercise of the inspector's functions under this Division; or
- (c) directly or indirectly intimidate or threaten or attempt to intimidate an inspector or a person assisting an inspector in the exercise of the inspector's functions under this Division; or
- (d) without reasonable excuse, refuse or fail to comply with a requirement made or to answer a question of an inspector asked in accordance with this Division; or
- (e) furnish an inspector with information requested under this Division knowing that it is false or misleading in a material particular.

Maximum penalty: 100 penalty units.

Offence: impersonating an inspector

31O. A person must not impersonate, or falsely represent that the person is, an inspector.

Maximum penalty: 100 penalty units.

Disclosure of information

31P. (1) A person who is, or was at any time, an inspector must not disclose any information relating to any manufacturing or commercial secrets or working processes that was obtained by the inspector in connection with the administration or execution of the relevant legislation.

Maximum penalty: 20 penalty units.

(2) Subsection (1) does not operate to prevent the disclosure of information where that disclosure is:

- (a) made in connection with the administration or execution of the relevant legislation; or

SCHEDULE 1—AMENDMENT OF OCCUPATIONAL HEALTH
AND SAFETY ACT 1983—*continued*

- (b) made with the prior permission of the Minister; or
- (c) ordered by a court, or by any other body or person authorised by law to examine witnesses, in the course of, and for the purpose of, the hearing and determination by that court, body or person of any matter or thing.

(3) The Minister may grant the permission referred to in subsection (2) (b) only if the Minister is satisfied that to do so would be in the public interest.

Power of employees' representative to accompany inspector

31Q. (1) An inspector who is proposing to undertake an inspection of a place of work with respect to a matter that may affect the health, safety or welfare of employees at the place of work:

- (a) must, to the extent that it is practicable, consult a representative of the employees or an industrial organisation of employees registered or recognised under the Industrial Relations Act 1991 whose members are employed at the place of work; and
- (b) must, if requested to do so by the representative, take the representative on any such inspection.

(2) In this section, “**inspector**” means an inspector appointed under this Division or under any associated occupational health and safety legislation.

(5) Section 44A (**Industry codes of practice**):

- (a) From section 44A (3) (a), omit “or safety”, insert instead “, safety or welfare”.
- (b) From section 44A (10), omit “because the person”, insert instead “by reason only that the person”.

SCHEDULE 1—AMENDMENT OF OCCUPATIONAL HEALTH
AND SAFETY ACT 1983—*continued*

(6) Section 45 (**Regulations**):

- (a) From sections 45 (1A) (r) and (t), omit “who is appointed under the Factories, Shops and Industries Act 1962”.
- (b) From section 45 (2), omit “under the”, insert instead “under this Act or any”.
- (c) Omit section 45 (3).

(7) Section 48 (**Authority to prosecute**):

From section 48 (1) (b), omit “appointed pursuant to the Factories, Shops and Industries Act 1962”.

(8) Section 52 (**Offence: Obstruction or hindering persons in exercise of powers**):

At the end of section 52, insert:

(2) If an act or omission constitutes an offence under this section and section 31N, the offender is not liable to be punished twice in respect of the offence.

(9) Section 52A:

After section 52, insert:

Offence: Disruption of workplace by creating health or safety fears

52A. (1) A person must not deliberately create a risk (or the appearance of a risk) to the health or safety of persons at a place of work with the intention of causing a disruption of work at that place.

Maximum penalty: 50 penalty units.

(2) It is a defence to any proceeding for an offence against this section if the person who contravened the section had a reasonable excuse or lawful authority for creating the risk or the appearance of the risk.

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SCHEDULE 1—AMENDMENT OF OCCUPATIONAL HEALTH
AND SAFETY ACT 1983—*continued*

(10) Section 55:

After section 54, insert:

Savings and transitional provisions

55. Schedule 8 has effect.

(11) Schedule 8:

After Schedule 7, insert:

**SCHEDULE 8—SAVINGS AND TRANSITIONAL
PROVISIONS**

(Sec. 55)

**PART 1—SAVINGS AND TRANSITIONAL
PROVISIONS CONSEQUENT ON ENACTMENT OF
CERTAIN ACTS**

Regulations

1. (1) The regulations may make regulations containing provisions of a savings or transitional nature consequent on the enactment of the following Acts:

this Act

Occupational Health and Safety Legislation (Amendment)
Act 1994

(2) Any such provision may, if the regulations so provide, take effect as from the date of assent to the Act concerned or a later date.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

SCHEDULE 1—AMENDMENT OF OCCUPATIONAL HEALTH
AND SAFETY ACT 1983—*continued*

**PART 2—PROVISIONS CONSEQUENTIAL ON
ENACTMENT OF THE OCCUPATIONAL HEALTH
AND SAFETY LEGISLATION (AMENDMENT)
ACT 1994**

Division 1—General

Definition

2. In this Part:

“**amending Act**” means the Occupational Health and Safety Legislation (Amendment) Act 1994.

Existing inspectors

3. (1) An existing inspector is taken to be appointed under Division 4 of Part 3 of this Act as amended by the amending Act.

(2) A reference in any other Act, in an instrument made under any Act or in any document of any kind to an existing inspector is to be read as a reference to an inspector appointed under this Act as amended.

(3) In this section:

“**existing inspector**” means:

- (a) an inspector appointed under the Factories, Shops and Industries Act 1962 and holding office immediately before the commencement of Schedule 3 (2) to the amending Act; or
- (b) an inspector appointed under the Construction Safety Act 1912 and holding office immediately before the commencement of Schedule 2 (2) to the amending Act.

**Division 2—Transitional provisions relating to
fumigations and pesticides**

Restriction on use of dangerous substance for fumigation

4. (1) In this Division:

“**dangerous substance**” includes:

- (a) hydrocyanic acid; or
- (b) any other substance prescribed by the regulations to be a dangerous substance for the purposes of this Division.

SCHEDULE 1—AMENDMENT OF OCCUPATIONAL HEALTH
AND SAFETY ACT 1983—*continued*

(2) A person who uses any dangerous substance for the purpose of fumigating premises is guilty of an offence unless:

- (a) the person is the holder of a licence (“**a fumigation licence**”) issued by the WorkCover Authority for the purposes of this Division; or
- (b) the fumigation is carried out under the personal supervision of the holder of the fumigation licence.

(3) The holder of a fumigation licence must observe and comply with the licence conditions when using any dangerous substance for the purpose of fumigating premises.

Maximum penalty: 40 penalty units.

(4) This clause has effect until the repeal or expiry of the Occupational Health and Safety (Fumigations and Pesticides) Regulation referred to in clause 5 (2) (b).

Revival of Part 12 of Public Health Regulations

5. (1) The repeal of Part 12 of the Public Health Regulations by section 10 of the Subordinate Legislation Act 1989 on 1 September 1992 is taken to have been postponed on 2 occasions under that Act and, accordingly, that Part as in force immediately before its repeal did not expire on that date.

(2) Part 12 of the Public Health Regulations (as continued in force by subclause (1)):

- (a) is taken to have been made under this Act and may be amended or repealed accordingly; and
- (b) may be cited as the Occupational Health and Safety (Fumigations and Pesticides) Regulation.

Proclamations under section 71A of Public Health Act 1902

6. Any proclamation made by the Governor under section 71A of the Public Health Act 1902 that was in force immediately before the repeal of that section is taken to have continued in force since that repeal and is taken, on the commencement of this clause, to have been made under clause 4.

Occupational Health and Safety Legislation (Amendment) Act 1994 No. 5

SCHEDULE 1—AMENDMENT OF OCCUPATIONAL HEALTH AND SAFETY ACT 1983—*continued*

Validation—section 71B of Public Health Act 1902 and Part 12 of Public Health Regulations

7. Any act or thing done or purporting to be done before the commencement of this clause:

- (a) under section 71B of the Public Health Act 1902 since the repeal of that section; or
- (b) under Part 12 of the Public Health Regulations since the repeal of that Part,

and that would have been validly done if that section or Part had continued in force is validated.

Repeal of clause 89 of Public Health Regulation 1991

8. Clause 89 of the Public Health Regulation 1991 is repealed.

SCHEDULE 2—AMENDMENT OF CONSTRUCTION SAFETY ACT 1912

(Sec. 4)

(1) Section 3 (**Definitions**):

- (a) In section 3 (1), insert in alphabetical order:

“**Authority**” means the WorkCover Authority constituted under the WorkCover Administration Act 1989.

- (b) From section 3 (1), omit the definition of “Chief Inspector”.
- (c) From section 3 (1), omit the definition of “Inspector”, insert instead:

“**Inspector**” means an inspector appointed under the Occupational Health and Safety Act 1983 to exercise functions under this Act.

(2) Section 5 (**Appointment of inspectors**):

Omit the section.

(3) Section 5A (**Boards of Reference**):

From section 5A (3), omit “Chief Inspector”, insert instead “General Manager of the Authority”.

SCHEDULE 2—AMENDMENT OF CONSTRUCTION SAFETY
ACT 1912—*continued*

(4) Section 13:

Omit the section, insert instead:

**Powers of entry of inspectors appointed under the
Occupational Health and Safety Act 1983**

13. (1) Section 31A of the Occupational Health and Safety Act 1983 applies to any place (whether or not a place of work) that an inspector has reason to believe is:

- (a) a lift; or
- (b) an escalator; or
- (c) a moving walk; or
- (d) an amusement device; or
- (e) a public stand; or
- (f) scaffolding; or
- (g) a supporting structure; or
- (h) any other place prescribed by the regulations.

(2) Accordingly, the other provisions of Division 4 of Part 3 of the Occupational Health and Safety Act 1983 also apply in relation to any such place.

(5) Section 13A (**Disclosure of information**):

Omit the section.

(6) Section 16 (**Obstruction of inspectors**):

Omit the section.

(7) Section 17 (**Power crane and power hoist drivers**):

- (a) From section 17, omit “Chief Inspector” wherever occurring, insert instead “Authority”.
- (b) From section 17 (7), omit “him” where firstly occurring, insert instead “the Authority”.
- (c) From section 17 (7A), omit “him” and “he” wherever occurring, insert instead “the Authority”.
- (d) From section 17 (7A), omit “under his hand”, insert instead “in writing”.

Occupational Health and Safety Legislation (Amendment) Act 1994 No. 5

SCHEDULE 2—AMENDMENT OF CONSTRUCTION SAFETY
ACT 1912—*continued*

(8) Section 17A (**Riggers, dogmen, scaffolders, crane chasers etc.**):

- (a) From section 17A, omit “Chief Inspector” wherever occurring, insert instead “Authority”.
- (b) From section 17A (5), omit “him” where firstly occurring, insert instead “the Authority”.
- (c) From section 17A (5AA), omit “him” and “he” wherever occurring, insert instead “the Authority”.
- (d) From section 17A (5AA), omit “under his hand”, insert instead “in writing”.

(9) Section 17B (**Endorsement of certificates**):

From section 17B (1), omit “the Chief Inspector”, “he” and “him”, insert instead “the Authority”.

(10) Section 18 (**Notice of accidents**):

Omit “Chief Inspector” wherever occurring, insert instead “Authority”.

(11) Section 21 (**Penalties and proceedings for offences**):

- (a) From section 21 (1), omit “Any penalty imposed by or under this Act or the regulations may be recovered in a summary manner before the Supreme Court in its summary jurisdiction or before a court of petty sessions.”.
- (b) At the end of section 21 (1), insert:
 - (1AA) Proceedings for an offence against this Act or the regulations are to be dealt with summarily:
 - (a) before a Local Court constituted by a magistrate sitting alone; or
 - (b) before the Industrial Court.
- (c) From section 21 (2), omit “by the Chief Inspector”, insert instead “on behalf of the Authority”.
- (d) From section 21 (2) (c), omit “Chief Inspector” wherever occurring, insert instead “Authority”.
- (e) From section 21 (3), omit “or an industrial magistrate”.
- (f) From section 21 (3A), omit “Supreme Court in its summary jurisdiction”, insert instead “Industrial Court”.

**SCHEDULE 2—AMENDMENT OF CONSTRUCTION SAFETY
ACT 1912—continued**

(12) Section 22 (**Regulations**):

- (a) From section 22 (2) (b) and (d), omit “Chief Inspector” wherever occurring, insert instead “Authority”.
- (b) Omit section 22 (2) (g) (vi).
- (c) From section 22 (2) (g1) (iii), omit “Chief Inspector by certificate in writing under his hand”, insert instead “Authority by certificate in writing”.
- (d) From section 22 (2) (g1) (iii), omit “he”, insert instead “the Authority”.

(13) Section 23:

After section 22, insert:

Savings, transitional and other provisions

23. The Second Schedule has effect.

(14) Second Schedule:

After the First Schedule, insert:

**SECOND SCHEDULE—SAVINGS, TRANSITIONAL
AND OTHER PROVISIONS**

(Sec. 23)

**PART 1—SAVINGS AND TRANSITIONAL
PROVISIONS CONSEQUENT ON ENACTMENT OF
CERTAIN ACTS**

Regulations

1. (1) The regulations may make regulations containing provisions of a savings or transitional nature consequent on the enactment of the following Acts:

 this Act

 Occupational Health and Safety Legislation (Amendment)
 Act 1994

(2) Any such provision may, if the regulations so provide, take effect as from the date of assent to the Act concerned or a later date.

SCHEDULE 2—AMENDMENT OF CONSTRUCTION SAFETY
ACT 1912—*continued*

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

**PART 2—PROVISIONS CONSEQUENTIAL ON
ENACTMENT OF OCCUPATIONAL HEALTH AND
SAFETY LEGISLATION (AMENDMENT) ACT 1994**

Definitions

2. In this Part:

“**amending Act**” means the Occupational Health and Safety Legislation (Amendment) Act 1994;

“**Chief Inspector**” means the person who held office as Chief Inspector of Construction Safety immediately before the repeal of section 5 by Schedule 2 (2) to the amending Act;

“**Deputy Chief Inspector**” means the person who held office as Deputy Chief Inspector of Construction Safety immediately before the repeal of section 5 by Schedule 2 (2) to the amending Act.

Chief Inspector and Deputy Chief Inspector

3. (1) The Chief Inspector and Deputy Chief Inspector are taken to hold office as inspectors under the Occupational Health and Safety Act 1983 (as amended by Schedule 1 (4) to the amending Act).

(2) Nothing in the amending Act or this clause is taken to affect the terms and conditions of employment of the Chief Inspector and Deputy Chief Inspector under the Public Sector Management Act 1988.

(3) The Authority may, under the WorkCover Administration Act 1989, delegate to the Chief Inspector or Deputy Chief Inspector the exercise on its behalf of such of its functions under this Act as it thinks fit.

**SCHEDULE 2—AMENDMENT OF CONSTRUCTION SAFETY
ACT 1912—continued**

Transfer of functions to Authority

4. (1) Anything done by or in relation to the Chief Inspector or Deputy Chief Inspector in the exercise of a function conferred or imposed on that person under this Act is taken, after the commencement of Schedule 2 (2) to the amending Act, to have been done by or in relation to the Authority and the functions under this Act are to be exercised by the Authority.

(2) Any proceedings to which the Chief Inspector or Deputy Chief Inspector is a party immediately before the commencement of the amendment to this Act made by Schedule 2 (2) to the amending Act are not affected by that amendment.

(3) However, on the commencement of that amendment, the Authority is taken to be a party to those proceedings instead of the Chief Inspector or Deputy Chief Inspector, as the case may be.

References to Chief Inspector and Deputy Chief Inspector

5. A reference in any other Act, in an instrument made under any Act or in any document of any kind to the Chief Inspector or Deputy Chief Inspector is to be read as a reference to the Authority.

Proceedings for penalties

6. Section 21, as in force immediately before the commencement of Schedule 2 (11) to the amending Act, continues to apply in relation to proceedings pending immediately before that commencement.

**SCHEDULE 3—AMENDMENT OF FACTORIES, SHOPS AND
INDUSTRIES ACT 1962**

(Sec. 5)

(1) Section 4 (**Definitions**):

(a) In section 4 (1), insert in alphabetical order:

“Authority” means the WorkCover Authority constituted under the WorkCover Administration Act 1989.

SCHEDULE 3—AMENDMENT OF FACTORIES, SHOPS AND INDUSTRIES ACT 1962—*continued*

“Director-General” means the Director-General of the Department of Industrial Relations, Employment, Training and Further Education.

“General Manager” means the General Manager of the Authority.

- (b) From section 4 (1), omit the definitions of “Chief Inspector”, “Chief Inspector of Boilers”, “Deputy Chief Inspector” and “Under Secretary”.
- (c) From section 4 (1), omit the definition of “Inspector”, insert instead:

“Inspector” means an inspector appointed under the Occupational Health and Safety Act 1983 to exercise functions under this Act.

- (d) From section 4 (2), omit “Under Secretary” wherever occurring, insert instead “General Manager”.

(2) Part 2 (**Administration**):

Omit the Part.

(3) Section 12 (**Notification by inspector of defects in factory**):

From section 12 (1), omit “Chief Inspector”, insert instead “Authority”.

(4) Section 16 (**Documents to be exhibited**):

From section 16 (1) (b), omit “Chief Inspector”, insert instead “Authority”.

(5) Section 18 (**Inspector not to divulge contents of registers etc.**):

Omit the section.

(6) Section 22 (**Floors, roofs and ceilings**):

Omit the section.

Occupational Health and Safety Legislation (Amendment) Act 1994 No. 5

SCHEDULE 3—AMENDMENT OF FACTORIES, SHOPS AND INDUSTRIES ACT 1962—*continued*

- (7) Section 32 (**Prohibition of use of machines**):
Omit the section.
- (8) Section 41 (**Protection from fumes etc.**):
From section 41 (3), omit “Chief Inspector” wherever occurring, insert instead “Authority”.
- (9) Section 42 (**Confined spaces**):
Omit the section.
- (10) Section 43 (**Precautions against explosion**):
From section 43 (5), omit “Chief Inspector” and “he”, insert instead “Authority” and “the Authority” respectively.
- (11) Section 45 (**Means of escape from and extinguishing fires**):
From section 45 (2) (b), omit “Under Secretary”, insert instead “General Manager”.
- (12) Section 47 (**Exemptions from compliance**):
Omit “Chief Inspector may by certificate under his hand” and “he”, insert instead “Authority may by certificate in writing” and “the Authority” respectively.
- (13) Section 65 (**Power to make regulations**):
- (a) From sections 65 (1) (e) and (f), omit “Chief Inspector of Boilers” wherever occurring, insert instead “Authority”.
 - (b) From section 65 (1) (j), omit “the Chief Inspector of Boilers” and “he” wherever occurring, insert instead “the Authority”.
 - (c) From section 65 (1) (j), omit “under his hand”.
 - (d) From section 65 (2) (a) (vii), omit “the Chief Inspector of Boilers” and “he” wherever occurring, insert instead “the Authority”.

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SCHEDULE 3—AMENDMENT OF FACTORIES, SHOPS AND INDUSTRIES ACT 1962—*continued*

- (e) From section 65 (2) (a) (vii), omit “under his hand”.
- (f) From section 65 (2) (a) (x), omit “Chief Inspector of Boilers by notice in writing under his hand”, insert instead “Authority by notice in writing”.

(14) Section 66 (**Power to make regulations**):

Omit section 66 (f).

(15) Section 73:

Omit the section, insert instead:

Powers of entry of inspectors appointed under the Occupational Health and Safety Act 1983

73. (1) Section 31A of the Occupational Health and Safety Act 1983 applies to any premises or place (whether or not a place of work) that an inspector has reason to believe:

- (a) are premises, or is a place, where any boiler, pressure vessel, engine, refrigerating system or chaff-cutting machine is in use or any industry or rural industry is carried on; or
- (b) are premises, or is a place, where there is any vehicle containing a refrigerated compartment, or is such a vehicle; or
- (c) is a vehicle containing a refrigerated compartment that is in or on a public road or other place to which the public (whether on payment of a fee or otherwise) ordinarily has access.

(2) Accordingly, the other provisions of Division 4 of Part 3 of the Occupational Health and Safety Act 1983 also apply in relation to any such premises or place.

(16) Section 74 (**Definitions**):

From the definitions of “Inspector” and “State award” in section 74 (1), omit “Industrial Arbitration Act 1940” wherever occurring, insert instead “Industrial Relations Act 1991”.

Occupational Health and Safety Legislation (Amendment) Act 1994 No. 5

SCHEDULE 3—AMENDMENT OF FACTORIES, SHOPS AND INDUSTRIES ACT 1962—*continued*

- (17) Section 78A (**Exemption from provisions of this Division**):
Omit “Under Secretary” wherever occurring, insert instead “Director-General”.
- (18) Section 101A:
After section 101, insert:
Disclosure of information
101A. Section 745 of the Industrial Relations Act 1991 is taken to apply to an inspector who obtains information relating to any manufacturing or commercial secrets or working processes in connection with the administration of this Act.
- (19) Section 104 (**Definitions**):
From the definitions of “Apprentice” and “Inspector”, omit “Industrial Arbitration Act 1940” wherever occurring, insert instead “Industrial Relations Act 1991”.
- (20) Section 105 (**Constitution of Council**):
From section 105 (1) (c) (i), omit “Under Secretary”, insert instead “Director-General”.
- (21) Sections 108 (**Hairdressers to be licensed**), 109 (**Grant, refusal, cancellation or suspension of licence**), 110 (**Qualifications for licences**):
From sections 108, 109 and 110, omit “Under Secretary” wherever occurring, insert instead “Director-General”.
- (22) Section 114A:
After section 114, insert:
Disclosure of information
114A. Section 745 of the Industrial Relations Act 1991 is taken to apply to an inspector who obtains information relating to any manufacturing or commercial secrets or working processes in connection with the administration of this Act.

SCHEDULE 3—AMENDMENT OF FACTORIES, SHOPS AND INDUSTRIES ACT 1962—*continued*

(23) Section 144 (**Regulations**):

From section 144 (2), omit “Chief Inspector” wherever occurring, insert instead “Authority”.

(24) Section 145 (**Proceedings**):

(a) From section 145 (1) (a), omit “under section 7 (5) involving an inspector but not in the case of an offence under”, insert instead “under the Act and the regulations other than”.

(b) Omit sections 145 (3), (3A) and (3B), insert instead:

(3) Proceedings for an offence against this Act or the regulations are to be dealt with summarily:

(a) before a Local Court constituted by a Magistrate sitting alone; or

(b) before the Industrial Court.

(3A) The maximum penalty that may be imposed in those proceedings by a Local Court is 100 penalty units or the maximum penalty provided in respect of the offence, whichever is the lesser.

(3B) The maximum penalty that may be imposed in those proceedings by the Industrial Court is the maximum penalty provided in respect of the offence.

(25) Section 148 (**Evidentiary provisions**):

From section 148 (1) (c), omit “Under Secretary” wherever occurring, insert instead “General Manager”.

(26) Section 154:

After section 153, insert:

Savings, transitional and other provisions

154. Schedule 2 has effect.

SCHEDULE 3—AMENDMENT OF FACTORIES, SHOPS AND INDUSTRIES ACT 1962—*continued*

(27) Schedule 2:

After Schedule 1, insert:

SCHEDULE 2—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

(Sec. 154)

PART 1—SAVINGS AND TRANSITIONAL PROVISIONS CONSEQUENT ON ENACTMENT OF CERTAIN ACTS

Regulations

1. (1) The regulations may make regulations containing provisions of a savings or transitional nature consequent on the enactment of the following Acts:

this Act

Occupational Health and Safety Legislation (Amendment) Act 1994

(2) Any such provision may, if the regulations so provide, take effect as from the date of assent to the Act concerned or a later date.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

PART 2—PROVISIONS CONSEQUENT ON ENACTMENT OF OCCUPATIONAL HEALTH AND SAFETY LEGISLATION (AMENDMENT) ACT 1994

Definitions

2. In this Part:

“**amending Act**” means the Occupational Health and Safety Legislation (Amendment) Act 1994;

SCHEDULE 3—AMENDMENT OF FACTORIES, SHOPS AND INDUSTRIES ACT 1962—*continued*

“**Chief Inspector**” means the person who held the office of Chief Inspector of Factories, Shops and Industries immediately before the repeal of section 7 by Schedule 3 (2) to the amending Act;

“**Chief Inspector of Boilers**” means the person who held the office of Chief Inspector of Boilers immediately before the repeal of section 7 by Schedule 3 (2) to the amending Act;

“**Deputy Chief Inspector**” means the person who held the office of Deputy Chief Inspector of Factories, Shops and Industries immediately before the repeal of section 7 by Schedule 3 (2) to the amending Act.

Chief Inspector, Chief Inspector of Boilers and Deputy Chief Inspector

3. (1) The Chief Inspector, Chief Inspector of Boilers and Deputy Chief Inspector are taken to hold office as inspectors under the Occupational Health and Safety Act 1983 (as amended by Schedule 1 (4) to the amending Act).

(2) Nothing in the amending Act or this clause is taken to affect the terms and conditions of employment of the Chief Inspector, Chief Inspector of Boilers and Deputy Chief Inspector under the Public Sector Management Act 1988.

(3) The Authority may, under the WorkCover Administration Act 1989, delegate to the Chief Inspector, Chief Inspector of Boilers or Deputy Chief Inspector the exercise on its behalf of such of its functions under this Act as it thinks fit.

Transfer of functions to Authority

4. (1) Anything done by or in relation to the Chief Inspector, Chief Inspector of Boilers or Deputy Chief Inspector in the exercise of a function conferred or imposed on the Chief Inspector, the Chief Inspector of Boilers or Deputy Chief Inspector under this Act is taken, after the commencement of Schedule 3 (2) to the amending Act, to have been done by or in relation to the Authority and the functions under this Act are to be exercised by the Authority.

**SCHEDULE 3—AMENDMENT OF FACTORIES, SHOPS AND
INDUSTRIES ACT 1962—*continued***

(2) Any proceedings to which the Chief Inspector, the Chief Inspector of Boilers or Deputy Chief Inspector is a party immediately before the commencement of the amendment to this Act made by Schedule 3 (2) to the amending Act are not affected by that amendment.

(3) However, on the commencement of that amendment, the Authority is taken to be a party to those proceedings instead of the Chief Inspector, Chief Inspector of Boilers or Deputy Chief Inspector, as the case may be.

References to Chief Inspector, Chief Inspector of Boilers and Deputy Chief Inspector

5. A reference in any other Act, in an instrument made under any Act or in any document of any kind to the Chief Inspector, the Chief Inspector of Boilers or the Deputy Chief Inspector is to be read as a reference to the Authority.

Proceedings for penalties

6. Section 145, as in force immediately before the commencement of Schedule 3 (24) to the amending Act, continues to apply in relation to proceedings pending immediately before that commencement.

**SCHEDULE 4—AMENDMENT OF DANGEROUS GOODS
ACT 1975**

(Sec. 6)

(1) Section 4 (**Definitions**):

- (a) Omit the definition of “Chief Inspector”.
- (b) Insert in alphabetical order:

“Authority” means the WorkCover Authority constituted under the WorkCover Administration Act 1989;

- (c) From the definition of “inspector”, omit “or the Chief Inspector”.

SCHEDULE 4—AMENDMENT OF DANGEROUS GOODS
ACT 1975—*continued*

(2) Section 6:

Omit the section, insert instead:

Appointments

6. (1) The Authority may appoint as inspectors of dangerous goods any of the following persons:

- (a) a statutory officer;
- (b) a public servant;
- (c) a person employed by a public or local authority;
- (d) a person belonging to a class of persons prescribed by the regulations.

(2) Such persons as may be necessary for the administration of this Act may be employed under Part 2 of the Public Sector Management Act 1988.

(3) Section 7A (**Delegation of certain licensing functions to Environment Protection Authority**):

Omit “Chief Inspector” wherever occurring and “Chief Inspector’s”, insert instead “Authority” and “Authority’s” respectively.

(4) Section 8 (**Licensing of premises**):

From section 8 (1), omit “Chief Inspector”, insert instead “Authority”.

(5) Section 10 (**Licensing of vehicles and vessels**):

From section 10 (1), omit “Chief Inspector”, insert instead “Authority”.

(6) Section 17 (**Import licences and permits**):

Omit “Chief Inspector” wherever occurring, insert instead “Authority”.

(7) Section 19 (**Licences or permits to manufacture explosives**):

Omit “Chief Inspector” wherever occurring, insert instead “Authority”.

(8) Section 21 (**Sale licence**):

From section 21 (1), omit “Chief Inspector”, insert instead “Authority”.

SCHEDULE 4—AMENDMENT OF DANGEROUS GOODS
ACT 1975—*continued*

- (9) Section 27 (**Licences generally**):
- (a) Omit “Chief Inspector” wherever occurring, insert instead “Authority”.
 - (b) From section 27 (2), omit “he”, insert instead “the Authority”.
- (10) Section 27A (**Commissioner of Police to report on certain licences etc. relating to explosives**):
- (a) Omit “Chief Inspector” wherever occurring, insert instead “Authority”.
 - (b) From section 27A (2), omit “him”, insert instead “the Authority”.
- (11) Section 28 (**Suspension or cancellation**):
- Omit “Chief Inspector” wherever occurring, insert instead “Authority”.
- (12) Section 29 (**Appeals**):
- From section 29 (1), omit “Chief Inspector”, insert instead “Authority”.
- (13) Section 32 (**Obstruction of inspectors etc.**):
- From section 32 (2), omit “Chief Inspector”, insert instead “Authority”.
- (14) Section 33 (**Proceedings for offences**):
- (a) From sections 33 (1) (b) and (1B), omit “Supreme Court in its summary jurisdiction” wherever occurring, insert instead “Industrial Court”.
 - (b) At the end of section 33 (1B), insert:
 - (1C) The provisions of the Industrial Relations Act 1991, and of the regulations under that Act, relating to appeals from, and the stating of a case by, a Local Court to the Industrial Court apply to proceedings before a Local Court for offences against this Act or the regulations.

**SCHEDULE 4—AMENDMENT OF DANGEROUS GOODS
ACT 1975—continued**

(15) Section 44 (**Disclosure of information**):

- (a) In section 44 (1), after “subsection (2)”, insert “or (3)”.
- (b) From section 44 (2), omit “Chief Inspector” and “his” wherever occurring, insert instead “Authority” and “its” respectively.
- (c) After section 44 (2), insert:

(3) The Authority may communicate any information concerning the location, type and quantity of dangerous goods, which comes to its knowledge in the exercise of its functions under this Act or the regulations, to any person or authority requiring the information to provide an emergency or rescue service or some other lawful service.

(16) Schedule 3 (**Transitional and other provisions**):

- (a) Before clause 1, insert:

**PART 1—SAVINGS AND TRANSITIONAL
PROVISIONS CONSEQUENT ON THE
ENACTMENT OF CERTAIN ACTS**

- (b) Omit clause 1, insert instead:

Regulations

1. (1) The regulations may make regulations containing provisions of a savings or transitional nature consequent on the enactment of the following Acts:

this Act

Occupational Health and Safety Legislation (Amendment)
Act 1994

(2) Any such provision may, if the regulations so provide, take effect as from the date of assent to the Act concerned or a later date.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication;
- or

SCHEDULE 4—AMENDMENT OF DANGEROUS GOODS
ACT 1975—*continued*

- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.
- (c) After clause 3, insert:

**PART 2—PROVISIONS CONSEQUENTIAL ON THE
ENACTMENT OF OCCUPATIONAL HEALTH AND
SAFETY LEGISLATION (AMENDMENT) ACT 1994**

Definitions

4. In this section:

“**amending Act**” means the Occupational Health and Safety Legislation (Amendment) Act 1994;

“**Chief Inspector**” means the person who held the office of Chief Inspector of Dangerous Goods immediately before the amendment of section 6 by Schedule 4 (2) to the amending Act.

Chief Inspector

5. (1) The Chief Inspector is taken to hold office as an inspector under the Occupational Health and Safety Act 1983 (as amended by Schedule 1 (4) to the amending Act).

(2) Nothing in the amending Act or this clause is taken to affect the terms and conditions of employment of the Chief Inspector under the Public Sector Management Act 1988.

(3) The Authority may, under the WorkCover Administration Act 1989, delegate to the Chief Inspector the exercise on its behalf of such of its functions under this Act as it thinks fit.

Transfer of functions to WorkCover Authority

6. (1) Anything done by or in relation to the Chief Inspector in the exercise of a function conferred or imposed on the Chief Inspector under this Act is taken, after the commencement of Schedule 4 (2) to the amending Act, to have been done by or in relation to the Authority and the functions under this Act are to be exercised by the Authority.

(2) Any proceedings to which the Chief Inspector is a party immediately before the commencement of the amendment to this Act made by Schedule 4 (2) to the amending Act are not affected by that amendment.

SCHEDULE 4—AMENDMENT OF DANGEROUS GOODS
ACT 1975—*continued*

(3) However, on the commencement of that amendment, the Authority is taken to be a party to those proceedings instead of the Chief Inspector.

References to Chief Inspector

7. A reference in any other Act, in an instrument made under any Act or in any document of any kind to the Chief Inspector is to be read as a reference to the WorkCover Authority.

Proceedings for offences

8. Section 33, as in force immediately before the commencement of Schedule 4 (14) to the amending Act, continues to apply in relation to proceedings pending immediately before that commencement.

Inspectors

9. An inspector appointed under section 6 as in force immediately before the amendment of that section by Schedule 4 (2) is taken to be appointed under section 6 as amended.

[Minister's second reading speech made in—
Legislative Assembly on 10 November 1993
Legislative Council on 13 April 1994]

