

# **Equipment (Public Safety) Bill**

No.

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## **SCHEDULE**

Subject matter for Regulations

# LEGISLATIVE ASSEMBLY

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Read 1° 30 March 1994

*(Brought in by Mr Pescott and Mr Gude)*

## A BILL

to provide for public safety in relation to prescribed equipment and equipment sites, to amend the **Occupational Health and Safety Act 1985** and Schedule 4 to the **Magistrates' Court Act 1989**.

### **Equipment (Public Safety) Act 1994**

**The Parliament of Victoria enacts as follows:**

#### **PART 1—PRELIMINARY**

##### ***1. Purpose***

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The main purpose of this Act is to provide for public safety in relation to prescribed equipment and equipment sites.

##### ***2. Commencement***

- (1) Section 1 and this section come into operation on the day this Act receives the Royal Assent.

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Section headings appear in bold italics and are not part of the Act.  
(See **Interpretation of Legislation Act 1984**.)

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- (2) The remaining provisions of this Act come into operation on a day to be proclaimed.
- (3) If a provision referred to in sub-section (2) does not come into operation before 1 December 1994, it comes into operation on 1 December 1994. 5

**3. Definitions**

- (1) In this Act—

**“equipment”** means plant, machinery, apparatus, scaffolding, appliance, implement or tool, and includes— 10

- (a) any component of that equipment; and  
 (b) anything fitted, connected or appurtenant to that equipment;

**“equipment site”** means any place, whether or not in a building or structure, where prescribed equipment is or is being constructed, manufactured, installed, erected, altered, maintained, repaired or used; 15

**“inspector”** means an inspector appointed or deemed to be appointed under section 12; 20

**“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 25

- (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; 30

**“prescribed equipment”** means any equipment which is declared by the regulations to be prescribed equipment;

**“proprietor”** in relation to any prescribed equipment, means an owner, a lessee or a person having by 35

whatever right or title the actual possession or control of the equipment;

5 “site manager” in relation to an equipment site, means a person who has the management or control of the site;

“supply” in relation to any prescribed equipment, includes supply and resupply by way of sale, exchange, lease, hire or hire-purchase, whether as principal or agent.

10 (2) In this Act a reference to a site manager includes a reference to a person appointed by the site manager to act on his or her behalf for the purposes of this Act.

#### 4. *Act to bind Crown*

15 This Act binds the Crown not only in right of Victoria, but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

#### 5. *Application*

This Act does not apply to—

20 (a) a workplace within the meaning of the **Occupational Health and Safety Act 1985** except a workplace which is being used for the manufacture, construction, alteration, maintenance or repair of prescribed equipment for use outside a workplace; or

25 (b) prescribed equipment at a workplace except prescribed equipment which is being manufactured, constructed, altered, maintained or repaired for use outside a workplace; or

(c) prescribed equipment being used—

30 (i) in a mine within the meaning of section 369 of the **Mines Act 1958**; or

(ii) in connection with work being done under a licence within the meaning of the **Mineral Resources Development Act 1990**.

**6. *Objects of Act***

The objects of this Act are—

- (a) to secure the health and safety of persons in relation to the design, construction, manufacture, installation, erection, alteration, maintenance, repair and use of prescribed equipment; 5
- (b) to protect people generally against risks to health or safety in relation to prescribed equipment;
- (c) to eliminate, at the source, risks to health and safety of persons in relation to the design, construction, manufacture, installation, erection, alteration, maintenance, repair and use of prescribed equipment. 10

**PART 2—EQUIPMENT AND PUBLIC SAFETY****7. *Duties of proprietors of prescribed equipment*** 15

A proprietor of prescribed equipment must take any measures that are practicable to ensure that the equipment is safe and without risks to health when properly used.

**8. *Duties of manufacturers, designers, importers, suppliers and people who erect or install prescribed equipment*** 20

- (1) A person who designs, manufactures, imports or supplies any prescribed equipment must—
  - (a) ensure, so far as is practicable, that the equipment is so designed and constructed as to be safe and without risks to health when properly used; and 25
  - (b) carry out or arrange for the carrying out of any testing and examination that may be necessary for the performance of the duty imposed by paragraph (a); and 30
  - (c) take any action necessary to ensure that there will be available in connection with the use of

the prescribed equipment adequate information about—

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

(ii) any conditions necessary to ensure that when put to that use it will be safe and without risks to health.

(2) A person who erects or installs any prescribed equipment must 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) For the purposes of this section, prescribed equipment is not to be regarded as properly used if it is used without regard to any relevant information or advice that is available relating to its use.

**9. *Duties of persons in charge of prescribed equipment***

(1) A person who is in charge of prescribed equipment must take reasonable care for his or her own health and safety and for the health and safety of any other person who may be affected by his or her acts or omissions in relation to the equipment.

(2) A person who is in charge of prescribed equipment must not—

(a) wilfully or recklessly interfere with or misuse anything provided in the interests of health or safety pursuant to this Act or the regulations; or

(b) wilfully place at risk the health or safety of any person at the equipment site.

**10. *Compliance with regulations is compliance with Part 2***

Where the regulations make provision for or in relation to any duty, obligation, act, matter or thing to which this Part applies, a person who complies with the regulations in relation to that duty, obligation, act, matter or thing is deemed to have complied with this

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Part in relation to that duty, obligation, act, matter or thing.

**11. *Civil liability not affected by Part 2***

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 5
- (b) conferring a defence to an action in any civil proceedings or as otherwise affecting a right of action in any civil proceedings; or 10
- (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; or 15
- (d) taking away any right of action which a person may have in respect of a malicious and fraudulent claim that equipment is unsafe or a risk to health.

**PART 3—APPOINTMENT AND POWERS OF INSPECTORS 20****12. *Appointment of inspectors***

- (1) The Minister may appoint any officer or employee of the public service to be an inspector for the purposes of this Act.
- (2) An inspector appointed under section 38 (1) of the **Occupational Health and Safety Act 1985** is deemed to be an inspector under this Act. 25
- (3) The Minister must provide every inspector who is appointed under this section with a certificate of appointment. 30
- (4) A certificate of appointment provided under this section is conclusive proof of the inspector's appointment.
- (5) The Minister must provide every inspector appointed under this section with an identification card.



(6) An inspector must produce an identification card provided to him or her under this section or under section 38 of the **Occupational Health and Safety Act 1985**—

5 (a) if practicable, on each occasion before he or she proceeds to act under this Act; and

(b) on demand.

(7) A person must not—

10 (a) forge or counterfeit an identification card; or

(b) make use of any forged, counterfeited or false identification card; or

(c) impersonate the inspector named in an identification card or pretend to be an inspector.

**13. Powers of inspectors**

15 (1) An inspector may for the purpose of the execution of this Act or the regulations—

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

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

25 (c) take any equipment or materials that may be required;

(d) make any examination and inquiry that may be necessary to ascertain whether or not this Act or the regulations have been complied with;

30 (e) examine any prescribed equipment or substance or any other thing at the site;

(f) take or remove, without payment, any samples of any substance or thing that may be required for analysis;

35 (g) take possession of any prescribed equipment or thing for further examination or testing or for use as evidence;

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- (h) take photographs or measurements or make sketches or recordings;
  - (i) require the production of, examine and take copies of, any document or any part of any document; 5
  - (j) direct that the site or any part of the site be left undisturbed for as long as the inspector considers necessary;
  - (k) exercise any other powers that are necessary or that are conferred upon the inspector by this Act or the regulations. 10
- (2) For the purposes of sub-section (1) an inspector may seek the assistance of any person.

**14. Notice to site manager**

- (1) Upon entering any equipment site, an inspector must take all reasonable steps to notify the site manager of the entry. 15
- (2) Upon concluding an inspection an inspector must give to the site manager information with respect to the inspector’s observations and any action the inspector proposes to take in relation to the site. 20
- (3) A site manager must appoint a person to act as site manager for the purposes of this Act during any period that the site manager is absent from the equipment site. 25

**15. Site manager to assist inspector**

The site manager of an equipment site must 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 or the regulations. 30

**16. Samples**

- (1) The inspector must notify the site manager if the inspector proposes to take and remove a sample from any equipment site for the purposes of analysis. 35

- 5
- 10
- (2) After taking a sample the inspector must—
- (a) divide the sample taken into as many parts as are necessary and mark and seal and fasten up each part in such a manner as its nature will permit; and
  - (b) if required by the site manager, deliver one part to the site manager; and
  - (c) retain one part for future comparison; and
  - (d) if it is determined that an analysis of the sample is to be made, deliver one part to an analyst for analysis.

**17. Appeal against seizure**

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- 20
- (1) If under section 13 (1) (g), an inspector takes possession of any prescribed equipment or thing, the proprietor of the prescribed equipment or thing may appeal to the Administrative Appeals Tribunal against that seizure.
- (2) In determining an appeal the Administrative Appeals Tribunal may—
- (a) affirm the seizure; or
  - (b) order that the equipment or thing be returned to the proprietor and give directions for that return.

**18. Photographs**

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If under section 13 (1) (h), an inspector takes photographs or makes sketches or recordings, the inspector must notify the site manager of that fact and the address of a place where the photographs, sketches or recordings are or will be available for inspection.

30 **19. Interpreter**

If an inspector uses the assistance of an interpreter—

- (a) any inquiry or requisition to any person made on behalf of the inspector by the interpreter is deemed to have been made by the inspector; and

- (b) any answer made to the interpreter is deemed to have been made to the inspector.

**20. Protection against self incrimination**

No person is required under section 13 to answer any question or give any evidence tending to self incrimination. 5

**21. Offences in relation to inspections**

- (1) Any person who—
- (a) refuses access to a site to an inspector or person assisting an inspector; or 10
  - (b) obstructs an inspector in the exercise of the powers of the inspector under this Act or the regulations or induces or attempts to induce any other person to do so; or
  - (c) fails to produce any document required under this Act or the regulations by an inspector; or 15
  - (d) conceals the location or existence of any other person or any prescribed equipment from an inspector; or
  - (e) prevents or attempts to prevent any other person from assisting an inspector; or 20
  - (f) in any other way, hinders, impedes or opposes an inspector in the exercise of the powers of the inspector under this Act or the regulations—
- is guilty of an offence. 25
- (2) Any 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.
- (3) Any person who is guilty of an offence against this section is liable— 30
- (a) if that person is a body corporate, to a penalty of not less than 50 penalty units or more than 2500 penalty units; or

- (b) in any other case—
- (i) to a penalty of not less than 10 penalty units or more than 500 penalty units; or
  - (ii) to imprisonment for not more than 5 years; or
  - (iii) to both the penalty and the imprisonment.

**PART 4—IMPROVEMENT AND PROHIBITION NOTICES**

**22. *Inspector may issue improvement notice***

- (1) If an inspector is of the opinion that any person—
- (a) is contravening any provision of this Act or the regulations; 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 must—
- (a) state that the inspector is of the opinion that the person—
    - (i) is contravening a provision of this Act or the regulations; 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 or the regulations in respect of which that opinion is held; and
  - (d) specify the day (being a day more than 7 days after the day on which the notice is issued) before which the person is required to remedy

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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 25; and 5
  - (b) who does not comply with the improvement notice—
- is guilty of an offence. 10

**23. Inspector may issue prohibition notice**

- (1) If an inspector is of the opinion that at any equipment site 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 a prohibition notice to the person who has or may be reasonably presumed to have control over the activity. 15
- (2) A prohibition notice must prohibit 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. 20
- (3) A prohibition notice must—
  - (a) state that the inspector is of the opinion that at the site 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 25
  - (b) state the reasons for that opinion; and
  - (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 30
  - (d) if, in the inspector's opinion, the activity involves a contravention or likely contravention of any provision of this Act or the regulations, 35

specify that provision and state the reasons for that opinion.

(4) A person—

(a) to whom a prohibition notice is issued in relation to which an appeal has not been made under section 25; and

(b) who does not comply with the prohibition notice—

is guilty of an offence.

(5) A person who is guilty of an offence under this section is liable—

(a) if that person is a body corporate, to a penalty of not less than 50 penalty units or more than 2500 penalty units;

(b) in any other case—

(i) to a penalty of not less than 10 penalty units or more than 500 penalty units; or

(ii) to imprisonment for not more than 5 years; or

(iii) to both the penalty and the imprisonment.

(6) If an appeal has been made under section 25 an inspector must not give a certificate under sub-section (2) until after the appeal is withdrawn or decided.

#### **24. Notices may include directions**

(1) An inspector may include in an improvement notice or a prohibition notice, directions as to the measures to be taken to remedy any contravention, likely contravention, risk, matters or activities to which the notice relates.

(2) Any direction under sub-section (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, risk, matters or activities.

**25. Appeals against notices**

- (1) A person to whom an improvement notice or prohibition notice is issued may within 7 days after the notice is issued appeal in writing against the notice to the Administrative Appeals Tribunal. 5
- (2) In determining the appeal, the Administrative Appeals Tribunal must inquire into the circumstances relating to the notice and may—
- (a) affirm the notice; or
  - (b) affirm the notice with such modifications as it thinks fit; or 10
  - (c) cancel the notice.
- (3) Pending the determination of the Administrative Appeals Tribunal the operation of the notice—
- (a) in the case of an improvement notice, is suspended; and 15
  - (b) in the case of a prohibition notice, continues, subject to any decision to the contrary made by the Administrative Appeals Tribunal.
- (4) If— 20
- (a) the Administrative Appeals Tribunal affirms an improvement notice or a prohibition notice or affirms 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 affirmed— 25
- that person is guilty of an offence and is liable to penalty applying in the case of an offence against section 22 or 23 (as the case requires).

**PART 5—LEGAL PROCEEDINGS**

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**26. General**

- (1) Any person who contravenes or fails to comply with any provision of this Act (except sections 12 (3) or



(5), 25 (2), 28 (5) or (6), 29 and 33 (4) or (5)) or the regulations is guilty of an offence against this Act.

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

(a) if that person is a body corporate, 400 penalty units; or

(b) in any other case, 100 penalty units.

10 (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.

### **27. *Infringement notices***

15 (1) Regulations under section 36 may provide for a person to be served with an infringement notice specifying a fixed penalty of not more than 10 penalty units for an offence against this Act as an alternative to a prosecution for the offence.

(2) The regulations must specify—

20 (a) the offences to which this alternative applies; and

(b) the fixed penalty for each of the offences; and

(c) the form of infringement notices; and

(d) the person or class of persons who may issue infringement notices; and

25 (e) the person to whom a fixed penalty must be paid; and

(f) the period within which a fixed penalty must be paid in order to avoid prosecution.

(3) An infringement notice must state—

30 (a) the name of the alleged offender; and

(b) the nature, in general terms, of the offence alleged to have been committed; and

(c) the date, time and place of the alleged offence; and

35 (d) the amount of the fixed penalty; and

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- (e) the period within which and the place where the fixed penalty may be paid; and
  - (f) that the alleged offender is entitled to disregard the infringement notice and defend the prosecution for the alleged offence in court. 5
- (4) A person who issued an infringement notice may withdraw it within 28 days after service by serving a withdrawal notice in the prescribed form on the person on whom the infringement notice was served.
- (5) If the person pays the penalty before the infringement notice is withdrawn, the person is entitled to a refund of the penalty. 10
- (6) If the person pays the penalty within the time specified in the infringement notice or, if the person who issued the notice allows, before proceedings are commenced against the person in respect of the alleged offence— 15
- (a) further proceedings are not to be taken against the person; and
  - (b) a conviction must not be recorded against that person for the offence. 20
- (7) A penalty paid under this section is to be dealt with in the same way as a penalty paid as a result of a conviction.
- (8) If— 25
- (a) a person served with an infringement notice has not paid the penalty within the time specified in the notice; or
  - (b) an infringement notice is withdrawn—
- proceedings may still be taken or continued for the alleged offence. 30

**28. Proceedings may be brought by Minister or inspectors**

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

- 5
- (2) No proceedings for an offence against this Act may be brought by an inspector without the authority in writing of the Minister given generally or in any particular case.
- (3) An authority under sub-section (2) is sufficient authority to continue proceedings in any case where the Court amends the charge, warrant or summons.
- (4) An inspector may conduct before the Court any proceedings brought by the inspector.
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- (5) The Minister must issue to inspectors guidelines with respect to the prosecution of offences generally, but must not issue guidelines or give directions in relation to any particular prosecution.
- 15
- (6) Any guidelines issued by the Minister under sub-section (5) must be published in the Government Gazette.

**29. *Judicial notice of signature of Minister or Secretary***

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All courts must take judicial notice of the signature of the Minister or the Secretary to the Department of Business and Employment on every document authorised or required to be signed by the Minister or the Secretary for the purposes of this Act or the regulations.

**30. *Provisions as to certain evidence***

25

In any proceedings for an offence against this Act—

(a) it is sufficient to allege that any building, structure, ship, boat or place is an equipment site within the meaning of this Act without further allegation;

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(b) it is sufficient to state the name of the ostensible site manager of any equipment site or proprietor of any prescribed equipment or person in charge of any prescribed equipment or the name or title by which the site manager or proprietor or person in charge is usually known;

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- (c) if the age of any person is material and there is insufficient evidence of the actual age of the person, the court may have regard to the apparent age of the person.

### **31. *Offences by bodies corporate***

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- (1) If 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 a person purporting to act as an officer, that officer or person is also guilty of that offence and liable to the penalty for that offence.

10

- (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.

15

- (3) In sub-section (1) “**officer**” in relation to a body corporate means—

(a) a director, secretary or executive officer of the body corporate; or

20

(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.

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### **32. *Further penalties for subsequent offences***

In any case where a person convicted of an offence against this Act has previously been convicted of an offence against this Act (whether the same offence or another), the court may, if it considers it appropriate to do so, impose in addition to the penalty it imposes for the present offence—

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- (a) in the case of an indictable offence—
- (i) if the person is a body corporate, a further penalty of not less than 50 penalty units and not more than 2500 penalty units; or
  - (ii) in any other case, a further penalty of not less than 10 penalty units and not more than 500 penalty units or imprisonment for not more than 5 years or both;
- (b) in the case of a summary offence—
- (i) if the person is a body corporate, a further penalty of not less than 50 penalty units and not more than 400 penalty units; or
  - (ii) in any other case, a further penalty of not less than 10 penalty units and not more than 200 penalty units or imprisonment for not more than 2 years or both.

**PART 6—GENERAL**

**33. *Codes of practice***

- (1) For the purpose of providing practical guidance to proprietors, manufacturers, designers, importers, suppliers, persons in charge of prescribed equipment and any other person who may be placed under an obligation by or under this Act, the Minister may approve any code of practice.
- (2) A code of practice may apply, adopt 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 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 must cause to be published in the Government Gazette notices of—
  - (a) the approval of a code of practice; and

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- (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 must cause a copy—
- (a) of every approved code of practice; and 5
  - (b) if 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) if an approved code of practice applies incorporates or refers to any other document, of every such document— 10
- to be made available for inspection by members of the public without charge at the office of the Department of Business and Employment during normal office hours. 15
- (6) An approved code of practice comes into effect—
- (a) on the day on which notice of approval of the code of practice is published in the Government Gazette or on a later day specified in the notice; and 20
  - (b) if 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 Government Gazette or on a later day specified in the notice. 25
- (7) An approved code of practice ceases 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 Government Gazette.
- (8) A person is not 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. 30

**34. *Use of codes of practice in proceedings***

If, in any proceedings under this Act, it is alleged that a person contravened or failed to comply with a 35

provision of this Act or the regulations in relation to which an approved code of practice was in effect at the time of the alleged contravention or failure—

5 (a) the approved code of practice is 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—

10 (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—

15 that matter is to 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  
20 code of practice.

### **35. Delegation**

25 The Minister may by instrument delegate to any person any of the powers, authorities, duties or functions of the Minister under this Act or the regulations other than this power of delegation.

### **36. Regulations**

30 (1) The Governor in Council may make regulations declaring any equipment to be prescribed equipment for the purposes of this Act and the regulations made under this Act.

(2) The Governor in Council may make regulations for or with respect to the health and safety of persons in relation to prescribed equipment and at equipment sites.

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- (3) Without in any way limiting the generality of sub-section (2), regulations may be made for the purposes of that sub-section for or with respect to any of the matters specified in the Schedule.
- (4) Any regulations made under this section may—
- (a) be general or may be restricted in operation as to time, place, persons or circumstances whether that time, place, person or circumstance is determined or ascertainable before, at or after the making of the regulations; 5 10
  - (b) apply, adopt, incorporate or refer to, with or without modification, any document formulated or published by any body or authority as in force at the time the regulation is made or as amended, formulated or published from time to time; 15
  - (c) make different prescriptions or impose different requirements in respect of different classes, sub-classes or kinds of equipment, equipment sites, activities, persons or circumstances;
  - (d) leave any matter or thing to be from time to time determined applied or approved by the Minister, the Secretary to the Department of Business and Employment, an inspector, or any other prescribed person or body of persons; 20
  - (e) provide that the Minister may grant exemptions in respect of any requirement of or prohibition in the regulations upon such terms and conditions as are prescribed; 25
  - (f) confer powers or impose duties in connection with the regulations on the Minister, the Secretary to the Department of Business and Employment, an inspector, any government department, any public authority, the council of any municipal district or any other prescribed person or body of persons. 30 35
- (5) Where any regulations are made pursuant to clause 9 of the Schedule, those regulations must provide that any person who may be affected by a decision of any other person or body of persons in relation to—



- 5
- (a) the refusal to grant renew or transfer the registration of or a licence in respect of any prescribed equipment or equipment site; or
- (b) the variation of the terms and conditions upon which the registration of or a licence in respect of any prescribed equipment or equipment site were granted; or
- 10
- (c) the cancellation or suspension of the registration of or a licence in respect of any prescribed equipment or equipment site—

is entitled—

(d) to be heard by that other person or body of persons in relation to that decision and to be given reasons for that decision; and

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(e) to appeal against that decision to the court, tribunal, person or body of persons that is prescribed.

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(6) Any regulations made under clause 9 of the Schedule must also provide that where a person has appealed against a decision the operation of that decision is stayed pending the determination of that appeal.

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(7) If a regulation made under clause 22 of the Schedule provides for a refund which requires a payment from the Consolidated Fund, the Consolidated Fund is hereby appropriated accordingly.

**37. Orders with respect to prescribed equipment**

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(1) The Governor in Council may by Order published in the Government Gazette prohibit absolutely or subject to conditions or restrictions the manufacture, supply or use of any prescribed equipment when in the opinion of the Governor in Council it is expedient for the public safety to make the Order.

(2) A person who contravenes an Order made under sub-section (1) is guilty of an offence.

**PART 7—AMENDMENT OF OTHER ACTS****38. Amendment of the Occupational Health and Safety Act 1985**

- (1) In section 59 of the **Occupational Health and Safety Act 1985**— 5
- (a) in sub-section (3) (c) after “classes” insert “, sub-classes”;
- (b) after sub-section (6) insert—
- “(6A) If a regulation made under clause 43 or 43A of Schedule One provides for a refund which requires a payment from the Consolidated Fund, the Consolidated Fund is hereby appropriated accordingly.” 10
- (2) In clause 43 of Schedule One to the **Occupational Health and Safety Act 1985** after “regulations” insert “and prescribing the person or persons or body of persons to which the fees are payable and providing for the distribution of those fees and for the refund of fees in prescribed circumstances.” 15
- (3) After clause 43 of Schedule One to the **Occupational Health and Safety Act 1985**, insert— 20
- “43A. Prescribing circumstances in which permit fees paid under the **Scaffolding Act 1971** may be refunded.”
- (4) Item 43A of Schedule One to the **Occupational Health and Safety Act 1985** is repealed on the day which is 12 months after the commencement of section 3 of this Act. 25

**39. Amendment of Magistrates’ Court Act 1989**

- In Schedule 4 to the **Magistrates’ Court Act 1989**, after item 52 insert— 30

**“52A. *Equipment (Public Safety) Act 1994***

Indictable offences under the **Equipment (Public Safety) Act 1994** but subject to the following penalties which may be imposed by the Court:

(a) For an offence against section 21 or 23 of that Act or an offence to which section 32 of that Act applies—

(i) in the case of a body corporate, a penalty of not less than 50 penalty units and not more than 400 penalty units and, if the defendant has previously been convicted of an offence against the **Equipment (Public Safety) Act 1994** (whether the same offence or any other offence), the Court may, if it considers it appropriate to do so, impose an additional penalty of not less than 50 penalty units and not more than 400 penalty units; or

(ii) in any other case, a penalty of not less than 10 penalty units and not more than 200 penalty units or imprisonment for a period not exceeding 2 years or both and, if the defendant has previously been convicted of an offence against the **Equipment (Public Safety) Act 1994** (whether the same or any other offence), the Court may, if it considers it appropriate to do so, impose an additional penalty of not less than 10 penalty units and not more than 200 penalty units or imprisonment for a period not exceeding 2 years or both;

*Equipment (Public Safety)*

- (b) For any other indictable offence under that Act—
  - (i) in the case of a body corporate, a penalty of not more than 400 penalty units and, if the defendant has previously been convicted of an offence against the **Equipment (Public Safety) Act 1994** (whether the same offence or any other offence), the Court may, if it considers it appropriate to do so, impose an additional penalty of not less than 50 penalty units and not more than 400 penalty units; or
  - (ii) in any other case, a penalty of not more than 100 penalty units and, if the defendant has previously been convicted of an offence against the **Equipment (Public Safety) Act 1994** (whether the same or any other offence), the Court may, if it considers it appropriate to do so, impose an additional penalty of not less than 10 penalty units and not more than 200 penalty units or imprisonment for a period not exceeding 2 years or both.”

**SCHEDULE**

**Subject matter for Regulations**

1. Regulating or prohibiting—
  - (a) the design, manufacture, supply or use of any prescribed equipment; and
  - (b) 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 prescribed equipment.
3. Requiring proprietors or other prescribed persons at the times and in the manner prescribed to examine, test, dismantle, repair, alter or adjust any prescribed equipment.
4. Requiring the use of prescribed equipment at any place.
5. Requiring any person to give notice of the erection or installation of prescribed equipment.
6. Regulating the siting, examination, repair, alteration, adjustment, dismantling, maintenance, care or use of and the conditions at, any equipment site.
7. Requiring proprietors of prescribed equipment or other prescribed persons at the times and in the manner prescribed to examine, test, analyse, label or mark any substance used in connection with prescribed equipment.
8. Inspections by inspectors.
9. Requiring any prescribed equipment to be registered or licensed by the Minister or by any other prescribed person or body of persons.
10. Prohibiting the use of any prescribed equipment unless it is registered or licensed.
11. Prescribing the persons who may apply for registration of or any licence in respect of any prescribed equipment.
12. Prescribing the terms and conditions of registration of any prescribed equipment, or of any licence in respect of any prescribed equipment.
13. Prescribing the circumstances in which registration of or any licence in respect of any prescribed equipment may be cancelled or suspended.
14. Providing for the variation of the terms and conditions of registration of or any licence in respect of any prescribed equipment.
15. Prescribing the manner of application for the granting, renewal or transfer of registration of or any licence in respect of any prescribed equipment.

SCHEDULE—*continued*

16. Prohibiting the carrying on of prescribed activities at equipment sites or the performance of prescribed work or the operation of prescribed equipment at equipment sites except under the supervision of or by persons with prescribed qualifications or experience.
17. Requiring proprietors, manufacturers and suppliers of prescribed equipment to provide information in the manner prescribed for the guidance of persons operating or using prescribed equipment with respect to the safe use of the equipment.
18. Regulating or requiring the taking of any action or precautions to avoid any accident or dangerous occurrence.
19. Prohibiting or requiring the taking of any action in the event of any accident or dangerous occurrence.
20. Regulating or requiring in prescribed circumstances the provision and use of protective clothing and equipment and rescue equipment.
21. Prescribing standards in relation to the use of, including standards of exposure to, any physical, biological, chemical or psychological hazard.
22. Prescribing the fees chargeable or payable for doing any act or providing any service for the purposes of the regulations and prescribing the person or persons or body of persons to which the fees are payable and providing for the distribution of those fees and for the refund of fees in prescribed circumstances.
23. Prescribing the manner of serving notices under this Act.
24. Prescribing forms for the purposes of this Act and the regulations.
25. Providing for contravention of or a failure to comply with a provision of a regulation to be an indictable offence or a summary offence.
26. Prescribing penalties for any contravention of or failure to comply with the regulations not exceeding the penalties set out in section 26 (2).
27. Prescribing any matter or thing which by this Act is required or permitted to be prescribed for the purposes of this Act.