

Queensland



**WORKPLACE HEALTH AND
SAFETY AND OTHER ACTS
AMENDMENT ACT 2003**

Act No. 18 of 2003

Queensland



**WORKPLACE HEALTH AND SAFETY
AND OTHER ACTS AMENDMENT
ACT 2003**

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Queensland



**Workplace Health and Safety and Other Acts
Amendment Act 2003**

Act No. 18 of 2003

**An Act to amend the *Workplace Health and Safety Act 1995*, and for
other purposes**

[Assented to 9 May 2003]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

1 Short title

This Act may be cited as the *Workplace Health and Safety and Other Acts Amendment Act 2003*.

2 Commencement

(1) Part 2A commences on 1 July 2003.

(2) The remaining provisions of this Act commence on a day to be fixed by proclamation.

PART 2—AMENDMENT OF WORKPLACE HEALTH AND SAFETY ACT 1995

3 Act amended in pt 2

This part amends the *Workplace Health and Safety Act 1995*.

4 Amendment of s 10 (Who is an “employer”?)

Section 10(1) and (2)—

omit, insert—

‘(1) A person is an “**employer**” if—

- (a) the person conducts a business or undertaking for gain or reward;
and
- (b) in the conduct of the business or undertaking, the person engages someone else to do work, other than under a contract for services, for or at the direction of the person.

‘(2) For subsection (1)(b), a person engages someone else to do work whether the person engaged works for gain or reward or on a voluntary basis.’.

5 Amendment of s 11 (Who is a “worker” and who is not?)

(1) Section 11, heading, ‘**and who is not**’—

omit.

(2) Section 11(1), ‘contract for service’—

omit, insert—

‘contract for services’.

(3) Section 11(3)—

omit.

6 Replacement of s 12 (Who is a “self-employed person”?)

Section 12—

omit, insert—

‘12 Who is a “self-employed person”?’

‘A person is a “**self-employed person**” if—

- (a) the person conducts a business or undertaking for gain or reward;
and
- (b) in the conduct of the business or undertaking, the person is not an employer or worker.’.

7 Insertion of new s 13A

After section 13—

insert—

‘13A What is “construction work”?’

‘Work is “**construction work**” if it is—

- (a) building work; or

- (b) civil construction work; or
- (c) demolition work.’.

8 Amendment of s 14 (What is a “construction workplace”?)

(1) Section 14(1)—

omit, insert—

‘(1) A “**construction workplace**” is a workplace where construction work is done, but only to the extent the construction work is—

- (a) building work or civil construction work for which the estimated final price at practical completion is, after discounting for any GST payable in relation to the supply of the work, more than \$80 000; or
- (b) demolition work.’.

(2) Section 14(2), before ‘construction work’—

insert—

‘the’.

(3) Section 14(4)—

omit.

9 Insertion of new pt 1, div 4, sdiv 3

Part 1, division 4—

insert—

‘Subdivision 3—Persons in control of relevant workplace areas and fixtures, fittings and plant in relevant workplace areas

‘15A Meaning of “relevant workplace area”

‘A “**relevant workplace area**” is—

- (a) any building or other structure, or a part of a building or other structure, used as a workplace; and

- (b) any area adjacent to the building or other structure or part associated with the use of the building or other structure or part as a workplace.

Examples of areas that could be adjacent to a building or other structure or part and associated with its use as a workplace—

1. Shopping centre car park.
2. Common area in a shopping centre.
3. Hotel beer garden.
4. Outside play area for a child care centre.

‘15B Meaning of “person in control” of relevant workplace area

‘(1) The **“person in control”**, of a relevant workplace area, is the person who is the owner of the relevant workplace area.

‘(2) However, if there is in place a lease, contract or other arrangement that provides, or has the effect of providing, for another person to have effective and sustained control of the relevant workplace area, the other person, and not the owner, is the **“person in control”** of the relevant workplace area.

‘15C Meaning of “person in control” of fixtures, fittings or plant

‘(1) The **“person in control”**, of fixtures, fittings or plant included in a relevant workplace area, is the person who is the owner of the relevant workplace area.

‘(2) However, if there is in place a contract or other arrangement that provides, or has the effect of providing, for another person to have effective and sustained control of the fixtures, fittings or plant, the other person, and not the owner of the relevant workplace area, is the **“person in control”** of the fixtures, fittings or plant.’.

10 Amendment of s 23 (Obligations for workplace health and safety)

(1) Section 23(1), after the second entry in the list of persons—

insert—

- persons who conduct a business or undertaking, whether or not as an employer or self-employed person’.

(2) Section 23(1), ‘, importers’—

omit.

(3) Section 23(1), after the second last entry in the list of persons—

insert—

- designers of buildings or other structures to be used as workplaces
- persons in control of relevant workplace areas
- persons in control of fixtures, fittings or plant included in relevant workplace areas’.

11 Amendment of s 24 (Discharge of obligations)

Section 24(1), penalty—

omit, insert—

‘Maximum penalty—

- (a) if the breach causes multiple deaths—2 000 penalty units or 3 years imprisonment; or
- (b) if the breach causes death or grievous bodily harm—1 000 penalty units or 2 years imprisonment; or
- (c) if the breach causes bodily harm—750 penalty units or 1 year’s imprisonment; or
- (d) if the breach involves exposure to a substance likely to cause death or grievous bodily harm—750 penalty units or 1 year’s imprisonment; or
- (e) otherwise—500 penalty units or 6 months imprisonment.’.

12 Amendment of s 24A (Charges for offences against s 24)

(1) Section 24A(1), ‘section 28(1), 28(2) or 29’—

omit, insert—

‘section 28, 29 or 29A’.

(2) Section 24A(2), ‘as employer or self-employed person’—

omit, insert—

‘as an employer, as a self-employed person or as a relevant person under section 29A’.

(3) Section 24A(3), ‘either as employer or self-employed person’—

omit, insert—

‘either as an employer or as a self-employed person or as a relevant person under section 29A’.

(4) Section 24A(4)(a), (b) and (c)—

omit, insert—

(a) section 28;

(b) section 29;

(c) section 29A.’.

13 Replacement of ss 28–29

Sections 28 and 29—

omit, insert—

‘28 Obligations of employers

‘(1) An employer has an obligation to ensure the workplace health and safety of each of the employer’s workers in the conduct of the employer’s business or undertaking.

‘(2) An employer has an obligation to ensure the employer’s own workplace health and safety in the conduct of the employer’s business or undertaking.

‘(3) An employer has an obligation to ensure other persons are not exposed to risks to their health and safety arising out of the conduct of the employer’s business or undertaking.

‘29 Obligations of self-employed persons

‘(1) A self-employed person has an obligation to ensure the self-employed person’s own workplace health and safety in the conduct of the self-employed person’s business or undertaking.

‘(2) A self-employed person has an obligation to ensure other persons are not exposed to risks to their health and safety arising out of the conduct of the self-employed person’s business or undertaking.

‘29A Obligations of persons conducting business or undertaking

‘(1) A person (the “**relevant person**”) who conducts a business or undertaking has an obligation to ensure the workplace health and safety of each person who performs a work activity for the purposes of the business or undertaking.

‘(2) The obligation applies—

- (a) whether or not the relevant person conducts the business or undertaking as an employer or self-employed person; and
- (b) whether or not the business or undertaking is conducted for gain or reward; and
- (c) whether or not a person who performs a work activity for the purposes of the business or undertaking works on a voluntary basis.

Example of obligation under this section—

A person who conducts a business or undertaking contracts with a supplier of labour to obtain the services of the supplier’s employees to perform a work activity for the purposes of the business or undertaking. As well as any obligation the person may have under section 28 to ensure the workplace health and safety of the person’s own employees, if any, the person also has, under this section, an obligation to ensure the workplace health and safety of the labour hire employees while they are performing the work activity.

‘29B What obligations under ss 28–29A may include

‘Without limiting sections 28 to 29A (the “**relevant sections**”), an obligation under a relevant section may, having regard to the circumstances of any particular case, include 1 or more of the following—

- (a) identifying hazards, assessing risks that may result because of the hazards, deciding on control measures to prevent, or minimise the level of, the risks, implementing control measures and monitoring and reviewing the effectiveness of the measures;
- (b) providing and maintaining a safe and healthy work environment;
- (c) providing and maintaining safe plant;

-
- (d) ensuring the safe use, handling, storage and transport of substances;
 - (e) ensuring safe systems of work;
 - (f) providing information, instruction, training and supervision to ensure health and safety.’.

14 Replacement of s 32 (Obligations of designers, manufacturers, importers and suppliers of plant)

Section 32—

omit, insert—

‘32 Obligations of designers of plant

‘(1) A designer of plant for use at a relevant place for the plant has an obligation to ensure that—

- (a) the plant is designed to be safe and without risk to health when used properly; and
- (b) if the designer gives the design to another entity that is to give effect to the design, the design is accompanied by information about the way the plant must be used to ensure health and safety.

‘(2) Also, a designer of plant for use at a relevant place for the plant has an obligation to take the action the chief executive reasonably requires to prevent the use of unsafe plant anywhere.

‘32A Obligations of manufacturers of plant

‘(1) A manufacturer of plant for use at a relevant place for the plant has an obligation to ensure that—

- (a) the plant is manufactured to be safe and without risk to health when used properly; and
- (b) the plant, when manufactured, is tested and examined to ensure it has been manufactured to be safe and without risk to health when used properly; and
- (c) the plant, when supplied to another person, is accompanied by information about the way the plant must be used to ensure health and safety.

‘(2) Also, a manufacturer of plant for use at a relevant place for the plant has an obligation to take the action the chief executive reasonably requires to prevent the use of unsafe plant anywhere.

‘32B Obligations of suppliers of plant

‘(1) A supplier of new plant for use at a relevant place for the plant has an obligation—

(a) either—

- (i) to examine and test the plant to ensure the plant is safe and without risk to health when used properly; or
- (ii) to ensure the manufacturer of the plant has given an assurance that the plant has been examined and tested to ensure it is safe and without risk to health when used properly; and

(b) to ensure the plant is accompanied by information about the way the plant must be used to ensure health and safety.

‘(2) A supplier of used plant for use at a relevant place for the plant has an obligation—

(a) to take all reasonable steps to ensure the plant is safe and without risk to health when used properly; and

Example of reasonable steps a supplier of used plant might take—

A reasonable step for a supplier to take might be to examine and test the plant to establish that it will be safe and without risk to health when used properly.

(b) to ensure the plant is accompanied by information about the way the plant must be used to ensure health and safety, if the information is available.

‘(3) Also, a supplier of plant for use at a relevant place for the plant has an obligation to take the action the chief executive reasonably requires to prevent the use of unsafe plant anywhere.

‘(4) Despite subsections (1)(b) and (2)(b), if the supplier is supplying plant by hiring it to another person, the supplier is obliged only to have the information available at the point of hire.

‘(5) In this section—

“**supplier**” does not include a manufacturer when supplying, but does include an importer when supplying.’.

15 Amendment of s 33 (Obligations of erectors and installers of plant or specified high risk plant)

(1) Section 33, heading, ‘**or specified high risk plant**’—

omit.

(2) Section 33, ‘or specified high risk plant at a relevant place’—

omit, insert—

‘at a relevant place for the plant’.

16 Replacement of s 34 (Obligations of manufacturers, importers and suppliers of substances for use at workplaces)

Section 34—

omit, insert—

‘34 Obligations of manufacturers of substances for use at workplace

‘(1) A manufacturer of a substance for use at a workplace has an obligation to ensure that—

- (a) the substance is safe and without risk to health when used properly; and
- (b) the substance is tested and examined to ensure it is safe and without risk to health when used properly; and
- (c) the substance, when supplied to another person, is accompanied by relevant information for the substance.

‘(2) Also, a manufacturer of a substance for use at a workplace has an obligation to take the action the chief executive reasonably requires to prevent the use of an unsafe substance at a workplace.

‘34A Obligations of suppliers of substances for use at workplace

‘(1) A supplier of a substance for use at a workplace has an obligation to—

- (a) take all reasonable steps to ensure the substance is safe and without risk to health when used properly; and
- (b) to ensure the substance is accompanied by relevant information for the substance.

‘(2) Also, a supplier of a substance for use at a workplace has an obligation to take the action the chief executive reasonably requires to prevent the use of an unsafe substance at a workplace.

‘(3) In this section—

“**supplier**” does not include a manufacturer when supplying, but does include an importer when supplying.

‘34B Obligation of designer of building or other structure used as a workplace

‘(1) A person (the “**designer**”) who designs a building or other structure, or a part of a building or other structure, intended to be used as a workplace has an obligation to ensure that, when the building or other structure or part has been constructed and is being used as a workplace and for the purpose for which it was designed, relevant persons for the building or other structure or part will not be exposed to risk to their health or safety arising out of the design of the building or other structure or part.

Examples of matters that might be considered in discharging a building designer’s obligation under this section—

1. Availability of anchorage points for window cleaners.
2. Adequacy of ventilation.
3. Adequacy of lighting in plant rooms.
4. Ease of access to the building for maintenance purposes.
5. Provision for maintenance and servicing of airconditioning units.

‘(2) For deciding, after the building or other structure or part has been designed, whether the designer discharged the designer’s workplace health and safety obligation under subsection (1), regard must be had to the standards of design prevailing when the designer designed the building or other structure or part.

‘(3) The designer’s obligation under subsection (1) applies only to the extent that the content of the design of the building or other structure or part falls under the control of the designer.

‘(4) In this section—

“**relevant persons**”, for a building or other structure, or a part of a building or other structure, means the persons for whom the building or other structure or part is a workplace, including persons who maintain or repair—

- (a) the building or other structure or part; or
- (b) fixtures, fittings or plant included in the building or other structure or part.

“**workplace**” does not include a workplace to the extent it is also domestic premises.

‘34C Obligation of person in control of relevant workplace area

‘(1) The person in control of a relevant workplace area has an obligation to ensure the relevant workplace area is safe and without risk to health.

‘(2) This section does not apply to a relevant workplace area to the extent that the relevant workplace area is also the domestic premises of the person in control of the relevant workplace area.

‘34D Obligation of person in control of fixtures, fittings or plant included in relevant workplace area

‘(1) The person in control of fixtures, fittings or plant included in a relevant workplace area has an obligation to ensure the fixtures, fittings or plant are safe and without risk to health.

‘(2) This section does not apply to a relevant workplace area to the extent that the relevant workplace area is also the domestic premises of the person in control of the relevant workplace area.’.

17 Insertion of new pt 5

After section 42C—

insert—

‘PART 5—ENFORCEABLE UNDERTAKINGS

‘42D Meaning of “workplace health and safety undertaking”

‘A **“workplace health and safety undertaking”** is a written undertaking made by a person (the **“identified person”** for the undertaking) that—

- (a) recognises that the chief executive alleges (the **“alleged contravention”** for the undertaking) that the identified person has contravened—
 - (i) section 24(1);¹ or
 - (ii) section 167,² because of a corporation’s contravention of section 24(1); and
- (b) identifies facts and circumstances of the alleged contravention; and
- (c) includes an assurance from the identified person about the identified person’s future behaviour.

‘42E Acceptance and publication of workplace health and safety undertaking

‘(1) The chief executive may, by written notice given to the identified person for a workplace health and safety undertaking, accept the workplace health and safety undertaking.

‘(2) When the chief executive accepts the workplace health and safety undertaking, the undertaking—

- (a) starts operating; and
- (b) becomes enforceable against the identified person.

‘(3) The chief executive may publish details of the undertaking.

1 Section 24 (Discharge of obligations)

2 Section 167 (Executive officers must ensure corporation complies with Act)

‘42F Proceeding for alleged contravention

‘(1) If a proceeding for the alleged contravention for the workplace health and safety undertaking has been started before an industrial magistrate against the identified person for the undertaking before the undertaking starts operating, the chief executive must take the necessary action to bring the proceeding to an end.

‘(2) If a proceeding for the alleged contravention has not been started before the undertaking starts operating, a proceeding for the alleged contravention must not be started.

‘42G Compliance with undertaking

‘The identified person for an operating workplace health and safety undertaking must not contravene the undertaking.

Maximum penalty—1 000 penalty units.

‘42H Withdrawal or variation of undertaking

‘(1) The identified person for an operating workplace health and safety undertaking may at any time, with the agreement of the chief executive—

- (a) withdraw the undertaking; or
- (b) change the provisions of the undertaking.

‘(2) However, the provisions of the undertaking can not be changed to provide for a different alleged contravention for the undertaking.

‘42I Contravention of workplace health and safety undertaking

‘(1) This section applies if the chief executive considers the identified person for an operating workplace health and safety undertaking has contravened the undertaking.

‘(2) The chief executive may apply to the industrial court for an order under this section.

‘(3) If the court is satisfied the identified person has contravened the undertaking, the court may make 1 or more of the following orders—

- (a) an order directing the identified person to comply with the undertaking, or a stated aspect of the undertaking, or to comply

with the undertaking, or a stated aspect of the undertaking, in a stated way;

- (b) an order directing the person to pay to the State an amount that is not more than the direct or indirect financial benefit obtained by the person from, and reasonably attributable to, the breach;
- (c) an order directing the person to give a security bond to the State for a stated period;
- (d) another order the court considers appropriate in the circumstances.

‘(4) A prosecution for the offence of contravening the workplace health and safety undertaking does not prevent the court from making an order under this section on the chief executive’s application, even though the prosecution and the order are based on the same facts and circumstances.

‘(5) The making of an order under this section, unless the order otherwise provides, does not prevent a prosecution for the offence of contravening the workplace health and safety undertaking, even though the order and the prosecution are based on the same facts and circumstances.’.

18 Amendment of s 70 (Negotiation between workers and employer about workplace health and safety representatives)

(1) Section 70(3), after ‘any doubt,’—

insert—

‘it is declared that’.

(2) Section 70—

insert—

‘(4) The Queensland Industrial Relations Commission may hear and decide, as an industrial matter, an application by a person aggrieved by the failure of a negotiation under subsection (1).

‘(5) Subsection (4) must be read with the *Industrial Relations Act 1999*.’.

19 Amendment of s 78 (Employer to tell workplace health and safety representative about certain things)

Section 78(1)(a)—

omit, insert—

‘(a) any workplace incident happening at the workplace;’.

19A Amendment of s 79 (Employer to display identity of workplace health and safety representatives)

(1) Section 79(1)—

omit, insert—

‘(1) An employer must display, in accordance with this section, a notice advising the identity of each workplace health and safety representative for the workplace.

Maximum penalty—10 penalty units.’.

(2) Section 79(2), penalty—

omit.

20 Amendment of s 81 (Entitlements of workplace health and safety representatives)

(1) Section 81(1)(b)—

omit, insert—

‘(b) to be told by the representative’s employer of any workplace incident happening at the workplace; and’.

(2) Section 81(1)(d)—

omit, insert—

‘(d) to review circumstances surrounding workplace incidents told to the representative by the employer; and’.

(3) Section 81(1)—

insert—

‘(o) to attend a training course prescribed under a regulation, and refresher courses for the training course, and to have all

reasonable costs of the representative's attendance at the courses, including course fees and the representative's usual remuneration, met by the employer.'.

21 Amendment of s 90 (Functions of workplace health and safety committees)

Section 90(3)(d)—

omit, insert—

'(d) reviewing the circumstances surrounding workplace incidents referred to the committee for review; and'.

21A Amendment of s 95 (Employer and principal contractor to display identity of workplace health and safety officer)

(1) Section 95(1), after 'display'—

insert—

' , in accordance with this section, '.

(2) Section 95(2) and (3), penalty—

omit.

22 Amendment of s 96 (Functions of workplace health and safety officers)

(1) Section 96(e)—

omit, insert—

'(e) to investigate, or assist the investigation of, all workplace incidents at the workplace; '.

(2) Section 96(g)—

omit, insert—

'(g) if any workplace incident or immediate risk to workplace health and safety at the workplace happens—to report the incident or risk to the employer or principal contractor; '.

23 Insertion of new s 96A

Part 8, division 5—

insert—

‘96A Assessment function

‘(1) A workplace health and safety officer has the function, at the specified intervals for the workplace, of—

- (a) conducting an assessment at the workplace to identify any hazards and unsafe or unsatisfactory workplace health and safety conditions and practices; and
- (b) complying with subsections (2) to (4) in relation to the assessment.

‘(2) In conducting the assessment, the workplace health and safety officer must use—

- (a) if there is a workplace health and safety committee established at the workplace—
 - (i) workplace health and safety criteria approved by the chief executive; or
 - (ii) workplace health and safety criteria agreed to by the committee; or
- (b) otherwise—workplace health and safety criteria approved by the chief executive.

‘(3) The workplace health and safety officer must record—

- (a) the results of the assessment; and
- (b) actions the officer recommends be taken to rectify hazards, and unsafe or unsatisfactory workplace health and safety conditions and practices, identified in the assessment.

‘(4) The workplace health and safety officer must, within 30 days after the assessment is completed, give a copy of the matters recorded under subsection (3) to each of the following—

- (a) if there is a workplace health and safety committee established at the workplace—the committee;
- (b) the employer or principal contractor.

‘(5) This section does not apply to a workplace if this Act does not require the appointment of a workplace health and safety officer for the workplace.

‘(6) This section does not limit section 96.

‘(7) In this section—

“**specified intervals**”, for a workplace, means—

- (a) if there is a workplace health and safety committee established at the workplace—the intervals agreed between the officer and the committee; or
- (b) if there is no workplace health and safety committee established at the workplace, or if there is a committee established, but the officer and the committee can not agree—at least once every 12 months.’.

24 Amendment of s 97 (Employer and principal contractor to help workplace health and safety officer etc.)

Section 97—

insert—

- ‘(f) must allow the workplace health and safety officer to conduct workplace inspections and assessments during normal working hours; and
- (g) must provide resources to the workplace health and safety officer to allow the officer to properly exercise the officer’s functions under this Act; and
- (h) must take appropriate action to rectify any identified unsafe workplace health and safety conditions and practices; and
- (i) must take all reasonable steps to ensure the workplace health and safety officer performs the officer’s function under section 96A; and
- (j) must keep anything given to the employer or principal contractor by the workplace health and safety officer under section 96A(4) for 5 years after it is given.’.

25 Amendment of s 104 (Entry to places)

(1) Section 104(1)(b), (c) and (d)—

renumber as section 104(1)(c), (d) and (f) respectively.

(2) Section 104(1)—

insert—

‘(b) the inspector reasonably suspects it is a workplace; or’.

(3) Section 104(1)(c) as renumbered, after ‘workplace’—

insert—

‘or suspected workplace’.

(4) Section 104(1)—

insert—

‘(e) specified high risk plant is situated at the place; or’.

(5) Section 104—

insert—

‘(4) Subsection (1) does not authorise an inspector to enter, without consent or a warrant, any part of domestic premises if the part is not also a workplace or suspected workplace.

‘(5) If an inspector enters a place under subsection (1)(b) and it is not a workplace, the inspector must leave the place immediately.’.

26 Amendment of s 108 (General powers after entering places)

(1) Section 108—

insert—

‘(1A) However, this section does not apply to an inspector who enters a place under section 104(1)(b) if the place is not a workplace.’.

(2) Section 108(6), examples, heading—

omit, insert—

‘*Examples of excuses that are not reasonable excuses as they are matters of mere convenience*—’.

(3) Section 108(6), examples as amended, *relocate* in section 108(4) before the penalty.

(4) Section 108(6)—

omit.

27 Insertion of new s 121

After section 120—

insert—

‘121 Power to inquire into workplace incident

‘(1) This section applies if an inspector becomes aware, or reasonably suspects, that a workplace incident has happened.

‘(2) The inspector may inquire into the circumstances and probable causes of the incident.

‘(3) The inspector may require a person who has knowledge, or whom the inspector reasonably suspects to have knowledge, of the circumstances of the incident to give the inspector reasonable help, as stated in the requirement, to inquire under subsection (2).

‘(4) A requirement under subsection (3) may be given orally or in writing.

‘(5) A person must comply with a requirement under subsection (3) unless the person has a reasonable excuse for not complying.

Maximum penalty—10 penalty units.

‘(6) If the requirement is to be complied with by the person giving information, or producing a document, other than a document required to be kept by the person under this Act, it is a reasonable excuse for the person to fail to comply with the requirement if complying with the requirement might tend to incriminate the person.’.

28 Insertion of new pt 11, div 1A

Part 11, before division 1—

insert—

‘Division 1A—Interpretation

‘147A Definitions for pt 11

‘In this part—

“**decision**”, of the chief executive, does not include a decision of the chief executive under part 5.³

“**original decision**” means a decision of the chief executive or an inspector.’.

29 Amendment of s 148 (Application for review)

Section 148, from ‘a decision’ to ‘may apply’—

omit, insert—

‘an original decision may apply’.

30 Amendment of pt 13 (Offences)

Part 13, division 1, and part 13, division 2, heading—

omit.

31 Insertion of new s 174

After section 173—

insert—

‘174 Discrimination or victimisation

‘(1) An employer must not dismiss a worker, or otherwise act to the detriment of a worker in the worker’s employment, for the dominant or substantial reason that the worker—

- (a) is, or has performed a function as, a workplace health and safety representative, a workplace health and safety officer or a member of a workplace health and safety committee; or

3 Part 5 (Enforceable undertakings)

- (b) has made a complaint about an issue, or in any other way has raised an issue, concerning workers' exposure to the risk of illness or injury; or
- (c) has contacted or given help to an inspector.

Maximum penalty—40 penalty units.

Examples of acting to the detriment of a worker—

1. Demotion of the worker.
2. Unwarranted transfer of the worker.
3. Reducing the worker's terms and conditions of employment.

'(2) If an employer contravenes subsection (1) by dismissing a worker, the worker is taken to have been unfairly dismissed under the *Industrial Relations Act 1999*, chapter 3, part 2,⁴ and subject to that part, has the remedies under that part.'

32 Insertion of new s 184A

After section 184—

insert—

'184A Appointment of principal contractors

'(1) If the owner of a construction workplace appoints a person as a principal contractor for the workplace, the owner must—

- (a) appoint the person by using the approved form; and
- (b) as soon as practicable after the appointment is made, give a copy of the appointment to the chief executive.

Maximum penalty—10 penalty units.

'(2) The owner of a construction workplace must ensure there is only 1 principal contractor appointed for the workplace at any particular time, unless the owner has the written approval of the chief executive to appoint more than 1 principal contractor for the workplace.

Maximum penalty—10 penalty units.

'(3) If the owner of a construction workplace, without the chief executive's written approval under subsection (2), has in place, or purports

4 *Industrial Relations Act 1999*, chapter 3 (Dismissals), part 2 (Unfair dismissals)

to have in place, 2 or more principal contractors for the construction workplace at the one time—

- (a) all principal contractor appointments for the workplace cease to have effect; and
- (b) the owner is, under this Act, the principal contractor for the workplace until another principal contractor appointment is made.

‘(4) The ceasing to have effect of principal contractor appointments because of subsection (3) does not affect an owner’s liability for an offence under subsection (2).’.

33 Amendment of s 185 (Powers of chief executive)

(1) Section 185(1), ‘, importer’—

omit.

(2) Section 185(1)(a), ‘or specified high risk plant’—

omit.

(3) Section 185(2)(a), ‘, importer’—

omit.

34 Amendment of pt 17 (Transitional provisions)

(1) Part 17, ‘*Division 2—Transitional matters*’—

omit.

(2) After section 190—

insert—

‘Division 3—Transitional provisions for Workplace Health and Safety and Other Acts Amendment Act 2003

‘191 Designing building or other structure

‘Section 34B⁵ does not apply to a person designing a building or other structure, or a part of a building or other structure, if the designing—

- (a) happened before the commencement of this section; or

(b) happens within 1 year after the commencement of this section.’.

35 Omission of sch 1 (List of offences and penalties)

Schedule 1—

omit.

36 Amendment of sch 3 (Dictionary)

(1) Schedule 3, definitions “**dangerous event**”, “**serious bodily injury**”, “**undertaking**” and “**work injury**”—

omit.

(2) Schedule 3—

insert—

‘ “**alleged contravention**”, for a workplace health and safety undertaking, see section 42D.

“**construction work**” see section 13A.

“**dangerous event**” means an event caused by specified high risk plant, or an event at a workplace caused by a workplace activity, if the event involves or could have involved exposure of persons to risk to their health and safety because of—

- (a) collapse, overturning, failure or malfunction of, or damage to, an item of specified high risk plant; or
- (b) collapse or failure of an excavation or of any shoring supporting an excavation; or
- (c) collapse or partial collapse of any part of a building or other structure; or
- (d) damage to any load bearing member of, or the failure of any brake, steering device or other control device of, a crane, hoist, conveyor, lift or escalator; or
- (e) implosion, explosion or fire; or

5 Section 34B (Obligation of designer of building or other structure used as a workplace)

- (f) escape, spillage or leakage of any hazardous material or dangerous goods; or
- (g) fall or release from a height of any plant, substance or object; or
- (h) damage to a boiler, pressure vessel or refrigeration plant; or
- (i) uncontrolled explosion, fire or escape of gas or steam.

“dangerous goods” see *Dangerous Goods Safety Management Act 2001*, section 9.⁶

“decision”, for part 11, see section 147A.

“hazardous material” see *Dangerous Goods Safety Management Act 2001*, section 12.⁷

“identified person”, for a workplace health and safety undertaking, see section 42D.

“included in”, in relation to fixtures, fittings or plant, includes contained in, attached to or forming part of.

“original decision”, for part 11, see section 147A.

“person in control”—

- (a) of a relevant workplace area—see section 15B; or
- (b) of fixtures, fittings or plant included in a relevant workplace area—see section 15C.

6 *Dangerous Goods Safety Management Act 2001*, section 9—

9 Meaning of “dangerous goods”

Goods are **“dangerous goods”** if they are defined under the ADG Code as—

- (a) dangerous goods; or
- (b) goods too dangerous to be transported.

7 *Dangerous Goods Safety Management Act 2001*, section 12—

12 Meaning of “hazardous material”

(1) A **“hazardous material”** is a substance with potential to cause harm to persons, property or the environment because of 1 or more of the following—

- (a) the chemical properties of the substance;
- (b) the physical properties of the substance;
- (c) the biological properties of the substance.

(2) Without limiting subsection (1), all dangerous goods, combustible liquids and chemicals are hazardous materials.

“reasonable excuse” does not include a matter of mere convenience.

“relevant information”, for a substance, means information that clearly identifies the substance, and that states the following—

- (a) any precautions that must be taken for the safe use of the substance;
- (b) any health hazards associated with the substance;
- (c) the results of any tests carried out for the substance that are relevant to its safe use.

“relevant workplace area” see section 15A.

“serious bodily injury” means an injury to a person that causes—

- (a) the injured person’s death; or
- (b) the loss of a distinct part or an organ of the injured person’s body; or
- (c) the injured person to be absent from the person’s voluntary or paid employment for more than 4 days.

“work injury” means—

- (a) an injury to a person that requires first aid or medical treatment if the injury was caused by work, a workplace, a workplace activity or specified high risk plant; or
- (b) the recurrence, aggravation, acceleration, exacerbation or deterioration of an existing injury in a person if—
 - (i) first aid or medical treatment is required for the injury; and
 - (ii) work, a workplace, a workplace activity or specified high risk plant caused the recurrence, aggravation, acceleration, exacerbation or deterioration; or
- (c) any serious bodily injury, if the injury was caused by work, a workplace, a workplace activity or specified high risk plant.

“workplace health and safety undertaking” see section 42D.’.

(3) Schedule 3, definition **“building work”**, from ‘if the estimated final price’—

omit, insert—

‘, but does not include the construction of a mobile home or prefabricated building—

- (a) if the construction is done at the workplace where the home or building is manufactured; and
- (b) the home or building is intended to be transported to another place outside the workplace.’.

(4) Schedule 3, definition “**civil construction work**”, from ‘bridge or associated works’—

omit, insert—

‘bridge or associated works.’.

(5) Schedule 3, definition “**domestic premises**”, ‘house’—

omit.

(6) Schedule 3, definition “**work caused illness**”, paragraph (a)—

omit, insert—

- ‘(a) an illness contracted by a person to which work, a workplace, a workplace activity or specified high risk plant was a significant contributing factor; or’.

(7) Schedule 3, definition “**work caused illness**”, paragraph (b), ‘in the course of doing work to which the work was a contributing factor’—

omit, insert—

‘if work, a workplace, a workplace activity or specified high risk plant was a significant contributing factor’.

(8) Schedule 3, definition “**workplace incident**”, paragraph (a)—

omit, insert—

- ‘(a) an incident resulting in a person suffering a work injury; or’.

(9) Schedule 3, definition “**workplace incident**”, paragraphs (b) and (c), ‘that must be notified to the chief executive under a regulation’—

omit.

PART 2A—AMENDMENT OF WORKCOVER QUEENSLAND ACT 1996

36A Act amended in pt 2A

This part amends the *WorkCover Queensland Act 1996*.

36B Amendment of s 32 (Who is an “employer”)

(1) Section 32(2), after ‘schedule 2A’—

insert—

‘, part 1’.

(2) Section 32—

insert—

‘(2A) However, a person mentioned in schedule 2A, part 2 is not an “employer”.’.

36C Insertion of new ch 17

After section 592—

insert—

‘CHAPTER 17—TRANSITIONAL PROVISION FOR WORKPLACE HEALTH AND SAFETY AND OTHER ACTS AMENDMENT ACT 2003

‘593 Injury before 1 July 2003

‘The provisions of this Act, as in force immediately before 1 July 2003, continue to apply in relation to an injury sustained by a worker before 1 July 2003 as if the *Workplace Health and Safety and Other Acts Amendment Act 2003*, part 2A had not been enacted.’.

36D Amendment of sch 2 (Who is a worker)

Schedule 2, part 1—

insert—

1A. A person who works for another person under a contract (regardless of whether the contract is a contract of service) unless—

- (a) the person performing the work—
 - (i) is paid to achieve a specified result or outcome; and
 - (ii) has to supply the plant and equipment or tools of trade needed to perform the work; and
 - (iii) is, or would be, liable for the cost of rectifying any defect in the work performed; or
- (b) a personal services business determination is in effect for the person performing the work under the *Income Tax Assessment Act 1997 (Cwlth)*, section 87-60.⁸.

36E Amendment of sch 2A (Persons who are employers)

(1) Schedule 2A, heading—

omit, insert—

‘WHO IS AN EMPLOYER’.

(2) Schedule 2A, before section 1—

insert—

‘PART 1—PERSONS WHO ARE EMPLOYERS’.

(3) Schedule 2A, after section 7—

insert—

‘PART 2—PERSONS WHO ARE NOT EMPLOYERS

1. A person is not the employer of a person who works for the person under a contract (regardless of whether the contract is a contract of service) if—

- (a) the person performing the work—

⁸ *Income Tax Assessment Act 1997 (Cwlth)*, section 87-60 (Personal services business determinations for individuals)

- (i) is paid to achieve a specified result or outcome; and
 - (ii) has to supply the plant and equipment or tools of trade needed to perform the work; and
 - (iii) is, or would be, liable for the cost of rectifying any defect in the work performed; or
- (b) a personal services business determination is in effect for the person performing the work under the *Income Tax Assessment Act 1997 (Cwlth)*, section 87-60.⁹.

PART 3—AMENDMENT OF ELECTRICAL SAFETY ACT 2002

37 Act amended in schedule

The schedule amends the *Electrical Safety Act 2002*.

9 *Income Tax Assessment Act 1997 (Cwlth)*, section 87-60 (Personal services business determinations for individuals)

SCHEDULE**AMENDMENT OF ELECTRICAL SAFETY ACT 2002**

section 37

- 1 Section 21(1)(b), ‘contract for service’—**
omit, insert—
‘contract for services’.

- 2 Section 22(1), ‘contract for service’—**
omit, insert—
‘contract for services’.

- 3 Section 24(1), ‘A’—**
omit, insert—
‘The’.

- 4 Section 27, penalty, paragraphs (a), (b) and (c)—**
renumber as paragraphs (b), (c) and (d).

- 5 Section 27, penalty—**
insert—
‘(a) if the breach causes multiple deaths—2 000 penalty units or
3 years imprisonment; or’.

- 6 Section 137(1)(e)—**
renumber as section 137(1)(f).

SCHEDULE (continued)

7 Section 137(1)—*insert—*

‘(e) the inspector reasonably suspects it is a workplace under the control of a person who has an electrical safety obligation under this Act, and it is—

- (i) open for carrying on business; or
- (ii) otherwise open for entry; or’.

8 Section 137(3), after ‘(1)(d)—*insert—*

‘or (e)’.

9 Section 144(1), after ‘enters a place’—*insert—*

‘, other than an inspector who enters a place under section 137(1)(e) if the place is not a workplace under the control of a person who has an electrical safety obligation under this Act’.

10 Section 144(6) and (7)—*omit, insert—*

‘(6) If the requirement is to be complied with by the person giving information, or producing a document, other than a document required to be kept by the person under this Act, it is a reasonable excuse for the person to fail to comply with the requirement if complying with the requirement might tend to incriminate the person.’.

11 After section 157—*insert—*

SCHEDULE (continued)

‘157A Power to inquire into serious electrical incident or dangerous electrical event

‘(1) This section applies if an inspector becomes aware, or reasonably suspects, that a serious electrical incident or dangerous electrical event has happened at a place.

‘(2) The inspector may inquire into the circumstances and probable causes of the incident or event.

‘(3) The inspector may require a person who has knowledge, or whom the inspector reasonably suspects to have knowledge, of the circumstances of the incident or event to give the inspector reasonable help, as stated in the requirement, to inquire under subsection (2).

‘(4) A requirement under subsection (3) may be given orally or in writing.

‘(5) A person must comply with a requirement under subsection (3) unless the person has a reasonable excuse for not complying.

Maximum penalty—100 penalty units.

‘(6) If the requirement is to be complied with by the person giving information, or producing a document, other than a document required to be kept by the person under this Act, it is a reasonable excuse for the person to fail to comply with the requirement if complying with the requirement might tend to incriminate the person.’.

12 After section 196—

insert—

‘196A Discrimination or victimisation

‘(1) An employer must not dismiss a worker, or otherwise act to the detriment of a worker in the worker’s employment, for the dominant or substantial reason that the worker—

- (a) has made a complaint about an issue, or in any other way has raised an issue, about exposure to electrical risk; or
- (b) has contacted or given help to an inspector.

Maximum penalty—40 penalty units.

SCHEDULE (continued)

Examples of acting to the detriment of a worker—

1. Demotion of the worker.
2. Unwarranted transfer of the worker.
3. Reducing the worker's terms and conditions of employment.

'(2) If an employer contravenes subsection (1) by dismissing a worker, the worker is taken to have been unfairly dismissed under the *Industrial Relations Act 1999*, chapter 3, part 2,¹⁰ and subject to that part, has the remedies under that part.'

13 Section 210(2)(i), 'plans'—

omit, insert—

'systems'.

14 Schedule 2—

insert—

'**"Articles regulation"**, for part 15, see section 211.

"equivalent licence", for part 15, see section 211.

"previous licence", for part 15, see section 211.

"reasonable excuse" does not include a matter of mere convenience.

"regulator", for part 15, see section 211.'

15 Schedule 2, definitions "commencement", "Electricity Regulation" and "EWC Board", '212'—

omit, insert—

'211'.

¹⁰ *Industrial Relations Act 1999*, chapter 3 (Dismissals), part 2 (Unfair dismissals)



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