WORKPLACE HEALTH AND
SAFETY ACT 1995

Reprinted as in force on 1 October 2002
(includes amendments up to Act No. 42 of 2002)

Reprint No. 4D

This reprint is prepared by
the Office of the Generica Parliamentary Counsel
Warning—This reprint is not an authorised copy
Information about this reprint

This Act is reprinted as at 1 October 2002. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

Also see endnotes for information about—
• when provisions commenced
• editorial changes made in earlier reprints.

Dates shown on reprints

Reprints dated at last amendment All reprints produced on or after 1 July 2002, hard copy and electronic, are dated as at the last date of amendment. Previously reprints were dated as at the date of publication. If a hard copy reprint is dated earlier than an electronic version published before 1 July 2002, it means the legislation was not further amended and the reprint date is the commencement of the last amendment.

If the date of a hard copy reprint is the same as the date shown for an electronic version previously published, it merely means that the electronic version was published before the hard copy version. Also, any revised edition of the previously published electronic version will have the same date as that version.

Replacement reprint date If the date of a hard copy reprint is the same as the date shown on another hard copy reprint it means that one is the replacement of the other.
# TABLE OF PROVISIONS

## WORKPLACE HEALTH AND SAFETY ACT

## 1995

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Short title</td>
<td>11</td>
</tr>
<tr>
<td><strong>Division 2—Application and operation of Act</strong></td>
<td></td>
</tr>
<tr>
<td>3 Application of Act</td>
<td>11</td>
</tr>
<tr>
<td>3A Relationship with Electrical Safety Act 2002</td>
<td>12</td>
</tr>
<tr>
<td>4 Act binds all persons</td>
<td>12</td>
</tr>
<tr>
<td>5 What does this Act apply to?</td>
<td>13</td>
</tr>
<tr>
<td>6 Who does this Act apply to?</td>
<td>13</td>
</tr>
<tr>
<td><strong>Division 3—Objective of Act</strong></td>
<td></td>
</tr>
<tr>
<td>7 Objective of Act</td>
<td>13</td>
</tr>
<tr>
<td><strong>Division 4—Interpretation</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Subdivision 1—Dictionary</strong></td>
<td></td>
</tr>
<tr>
<td>8 Definitions—the dictionary</td>
<td>15</td>
</tr>
<tr>
<td><strong>Subdivision 2—Other important terms</strong></td>
<td></td>
</tr>
<tr>
<td>9 What is a “workplace”?</td>
<td>15</td>
</tr>
<tr>
<td>10 Who is an “employer”?</td>
<td>15</td>
</tr>
<tr>
<td>11 Who is a “worker” and who is not?</td>
<td>16</td>
</tr>
<tr>
<td>12 Who is a “self-employed person”?</td>
<td>16</td>
</tr>
<tr>
<td>13 Who is the “principal contractor”?</td>
<td>16</td>
</tr>
<tr>
<td>14 What is a “construction workplace”?</td>
<td>17</td>
</tr>
<tr>
<td>15 When is plant or a substance not “used properly”?</td>
<td>17</td>
</tr>
</tbody>
</table>
Workplace Health and Safety Act 1995

PART 2—BASIC CONCEPTS

16 When is a worker at work? ................................. 18
17 When is a self-employed person performing work? .................. 18
18 What is consultation? ................................... 18
22 Ensuring workplace health and safety. .............................. 18

PART 3—WORKPLACE HEALTH AND SAFETY OBLIGATIONS

Division 1—Preliminary

23 Obligations for workplace health and safety .......................... 19
24 Discharge of obligations ................................... 20
24A Charges for offences against s 24 ................................ 20
25 Person may owe obligations in more than 1 capacity .............. 21
26 How obligations can be discharged if regulation etc. made ........ 21
27 How obligations can be discharged if no regulation etc. made .... 22

Division 2—Obligations of employers and others

28 Obligations of employers ................................... 22
29 Obligations of self-employed persons .............................. 22
30 Obligations of persons in control of workplaces .................... 22
31 Obligations of principal contractors .............................. 23
32 Obligations of designers, manufacturers, importers and suppliers of plant . 24
33 Obligations of erectors and installers of plant or specified high risk plant . 25
34 Obligations of manufacturers, importers and suppliers of substances for use at workplaces ........................................... 25
35 Obligations of owners of specified high risk plant ................. 26

Division 3—Obligations of workers and other persons

36 Obligations of workers and other persons at a workplace .......... 26

Division 4—Defences

37 Defences for div 2 or 3 .................................... 27

PART 4—REGULATIONS, ADVISORY STANDARDS, INDUSTRY CODES OF PRACTICE AND MINISTERIAL NOTICES

Division 1—Regulations

38 Regulations .................................................. 28

Division 2—Advisory standards and industry codes of practice

41 Advisory standards and industry codes of practice ............... 29
Workplace Health and Safety Act 1995

42 Use of advisory standards and industry codes of practice in proceedings

Division 3—Ministerial notices

42C Ministerial notices in urgent circumstances

PART 6—INDUSTRY CONSULTATIVE ARRANGEMENTS

Division 1—Purposes of part

43 Purposes of part

Division 2—The board and its functions

44 Workplace health and safety board

45 Functions of board

45A Annual report

Division 3—Membership and conduct of board proceedings

46 Membership of board

47 Times of board meetings

48 Conduct of proceedings

49 Disclosure of interests

50 Minutes

Division 4—Provisions about appointed board members

52 Duration of appointment

53 Leave of absence

54 Conditions of appointment

Division 5—Industry sector standing committees

55 Industry sector standing committees

56 Functions of industry sector standing committees

Division 6—Membership and conduct of industry sector standing committee proceedings

57 Membership of industry sector standing committee

58 Times of industry sector standing committee meetings

59 Conduct of industry sector standing committee proceedings

60 Disclosure of interests

61 Minutes

Division 7—Provisions about industry sector standing committee members

62 Duration of appointment
Workplace Health and Safety Act 1995

63 Leave of absence .................................................. 40
64 Conditions of appointment ...................................... 40

PART 7—WORKPLACE CONSULTATIVE ARRANGEMENTS

Division 1—Purposes of part

65 Purposes of part ..................................................... 41

Division 2—Definitions for part

66 Definitions for part ................................................ 41

Division 3—Workplace health and safety representatives

Subdivision 1—Preliminary

67 Who is a workplace health and safety representative? .......... 41
68 How many workplace health and safety representatives can a workplace have? ..................................................... 42
69 Workplace health and safety representative’s “area of representation” . . 42
70 Negotiation between workers and employer about workplace health and safety representatives. .................................... 42

Subdivision 2—Election process

71 Electing a workplace health and safety representative ............... 43
72 Workers to tell employer of intention to elect workplace health and safety representative ........................................... 43
73 Employer to facilitate election of workplace health and safety representative if asked .................................................... 43
74 Workers may ask union to conduct election of workplace health and safety representative ........................................... 44
75 Employers to be told of elected workplace health and safety representatives 44

Subdivision 3—Employer’s responsibilities

76 Employer must negotiate with workers if asked ................. 44
77 Employer to help workplace health and safety representatives .......... 45
78 Employer to tell workplace health and safety representatives about certain things ...................................................... 45
79 Employer to display identity of workplace health and safety representatives 46
80 Employer to tell new workers and display notices about workplace health and safety representatives’ provisions ................ 46

Subdivision 4—Entitlements and areas of responsibility

81 Entitlements of workplace health and safety representatives .......... 46
Workplace Health and Safety Act 1995

Subdivision 5—General

82 Election of a workplace health and safety representative not to diminish employer’s obligations ........................................48
83 Workplace health and safety representatives may be re-elected ..................48
84 Term as workplace health and safety representative ..............................48
85 Ceasing to be a workplace health and safety representative .................... 48

Division 4—Workplace health and safety committees

86 Workplace health and safety committees .............................................49
87 Membership of committee. ................................................................. 49
88 Times of meetings ................................................................. 50
89 Proceedings at meetings ................................................................. 50
90 Functions of workplace health and safety committees ..................... 50

PART 8—WORKPLACE HEALTH AND SAFETY OFFICERS

Division 1—Purpose of part

91 Purpose of part. ................................................................. 51

Division 2—Definition for part

92 Meaning of “qualified person” .................................................... 52

Division 3—Appointment of workplace health and safety officers

93 Appointment of workplace health and safety officer by employer ........ 52
94 Appointment of workplace health and safety officer by principal contractor… 53

Division 4—Identity of workplace health and safety officer to be displayed

95 Employer and principal contractor to display identity of workplace health and safety officer .............................................. 53

Division 5—Functions of workplace health and safety officers

96 Functions of workplace health and safety officers ............................ 54

Division 6—Employer’s and principal contractor’s responsibilities

97 Employer and principal contractor to help workplace health and safety officer etc. ...................................................... 54

Division 7—Appointment of workplace health and safety officer not to diminish employer’s obligations

98 Appointment of workplace health and safety officer not to diminish employer’s obligations ........................................... 55
Workplace Health and Safety Act 1995

PART 9—INSPECTORS

Division 1—Appointment

99 Appointment ................................................................. 56
100 Limitation of inspector’s powers. ..................................... 56
101 Inspector’s appointment conditions. ............................... 56
102 Inspector’s identity card .................................................. 57
103 Production or display of inspector’s identity card. ............... 57

Division 2—Inspectors’ general powers

104 Entry to places ............................................................... 58
105 Consent to entry .............................................................. 58
106 Warrants to enter ............................................................ 59
107 Warrants—applications made other than in person. .............. 60
108 General powers after entering places ............................... 61
109 Power to seize evidence etc. ............................................ 62
110 Inspector’s power to seize dangerous places and things ......... 63
111 Powers supporting seizure ............................................... 63
112 Receipt for seized things .................................................. 64
113 Forfeiture of seized things .............................................. 64
114 Return of seized things ................................................... 65
115 Access to seized things ................................................... 66

Division 3—Improvement and prohibition notices

117 Improvement notice ...................................................... 66
118 Prohibition notice .......................................................... 67
119 Order to secure compliance with notices .......................... 68

Division 4—Other investigative powers

120 Power to require name and address ................................. 68
122 Power to require production of certain documents ............... 69

Division 5—Other enforcement matters

123 Destruction of workplace, plant or substance that is a serious risk to health or safety ................................................... 70
124 Analysis of samples ....................................................... 71
125 Compensation .............................................................. 71
126 Forfeiture on conviction .................................................. 72
Workplace Health and Safety Act 1995

127 Dealing with forfeited things ........................................ 72
128 Inspector to give notice of damage ................................. 72

PART 10—BOARDS OF INQUIRY

Division 1—General

129 Minister may establish or re-establish boards of inquiry .......... 73
130 Role of board of inquiry ............................................ 74
131 Conditions of appointment ......................................... 74
132 Chief executive to arrange for services of staff and financial matters for board of inquiry .............................................. 74
133 Inspector may exercise powers for board’s inquiry .................. 74

Division 2—Conduct of inquiry

134 Procedure .............................................................. 75
135 Notice of inquiry ....................................................... 75
136 Inquiry to be held in public except in special circumstances .... 75
137 Protection of members, legal representatives and witnesses ....... 76
138 Record of proceedings to be kept .................................. 76
139 Procedural fairness and representation ................................ 76
140 Board’s powers on inquiry .......................................... 76
141 Notice to witness ...................................................... 77
142 Inspection of documents or things ................................... 77
143 Inquiry may continue despite court proceedings unless otherwise ordered ......................... 78
144 Offences by witnesses .............................................. 78
145 Contempt of board .................................................. 78
146 Report of offences .................................................. 79
147 Change of membership of board .................................... 79

PART 11—APPEALS

Division 1—Internal review of decisions

148 Application for review .............................................. 79
149 Procedure for review ................................................ 80
150 Review of decision .................................................. 80
151 Stay of operation of original decisions .............................. 81

Division 2—Appeals

152 Who may appeal? .................................................. 82
Workplace Health and Safety Act 1995

153 How to start appeal ................................................................. 82
154 Stay of operation of decisions ................................................. 82
155 Hearing procedures ............................................................... 83
156 Assessors .............................................................................. 83
157 Powers of court on appeal ..................................................... 83

PART 12—LEGAL PROCEEDINGS

Division 1—Evidence

158 Application of division ........................................................... 84
159 Proof of appointments and authority unnecessary .................... 84
160 Proof of signatures unnecessary ............................................. 84
161 Evidentiary aids. ................................................................. 84
162 Expert reports ................................................................. 85
163 Analyst’s certificate or report ................................................ 86

Division 2—Proceedings

164 Proceedings for offences ..................................................... 86
165 Limitation on time for starting proceedings ............................. 87
166 Responsibility for acts or omissions of representatives ............. 87
167 Executive officers must ensure corporation complies with Act. .... 88
168 Representation at hearing ................................................... 89
168A Costs of investigation ....................................................... 89
169 Recovery of fees .............................................................. 89

PART 13—OFFENCES

Division 1—Offence provisions

170 Offences against this Act ..................................................... 90

Division 2—Other offences

171 False or misleading statements .............................................. 90
172 False, misleading or incomplete documents ............................ 90
173 Obstructing inspectors ....................................................... 91
175 Employers and principal contractor not to encourage refusal to answer questions ........................................ 91
176 Impersonating inspectors and others .................................... 92
Workplace Health and Safety Act 1995

PART 14—GENERAL

Division 1—Accredited providers

177 Appointment ................................................................. 92
178 Functions of accredited providers ........................................ 93
179 Accredited provider’s appointment conditions ................. 93
180 Accredited provider’s identity card .................................. 93
181 Production or display of accredited provider’s identity card .......... 94
182 Revocation of accredited provider’s appointment ................. 94

Division 1A—Report about occupational health and safety performance

182A Application for report ..................................................... 94

Division 2—Miscellaneous

183 Protection from liability—officials .................................... 95
184 Protection from liability—others .................................... 95
185 Powers of chief executive ............................................. 95
186 Exemption of person or thing from Act ............................ 97

PART 15—ADMINISTRATION

187 Delegations ................................................................. 97

PART 17—TRANSITIONAL PROVISIONS

Division 1—Transitional provisions for Act No. 25 of 1995

189 Workplace Health and Safety Act 1989 references ................. 97

Division 2—Transitional provisions for the Workplace Health and Safety Amendment Act 1997

190 Existing advisory standards ............................................. 98

SCHEDULE 1

LIST OF OFFENCES AND PENALTIES

1 Purpose of schedule ......................................................... 99
2 List of offences and penalties ............................................. 99

SCHEDULE 2

SPECIFIED HIGH RISK PLANT

1 Meaning of “specified high risk plant” ................................ 102
2 Definitions for schedule .................................................... 102

SCHEDULE 3
Workplace Health and Safety Act 1995

DICTIONARY

ENDNOTES

1 Index to endnotes ........................................... 110
2 Date to which amendments incorporated. ................. 110
3 Key. ................................................................... 110
4 Table of earlier reprints ....................................... 111
5 List of legislation .................................................. 111
6 List of annotations ............................................... 113
7 List of forms. ...................................................... 120
WORKPLACE HEALTH AND SAFETY ACT 1995

[as amended by all amendments that commenced on or before 1 October 2002]

An Act about workplace health and safety, and for related purposes

PART 1—PRELIMINARY

Division 1—Introduction

1 Short title
This Act may be cited as the Workplace Health and Safety Act 1995.

Division 2—Application and operation of Act

3 Application of Act

(1) This Act does not apply to—
   (a) a coal mine to which the Coal Mining Safety and Health Act 1999 applies; or
   (b) a mine to which the Mining and Quarrying Safety and Health Act 1999 applies; or
   (c) land that is used for the obtaining, mining or conveying of petroleum under the Petroleum Act 1923.

(2) This Act does not limit the application of the following Acts—
   • Explosives Act 1999
   • Public Safety Preservation Act 1986
   • Radiation Safety Act 1999
   • Transport Operations (Road Use Management) Act 19

(3) However, a person on whom an obligation is imposed under part 3 must discharge the obligation by meeting the standard of workplace health and safety required under this Act even though another Act, other than an Act mentioned in subsection (1), may prescribe a lesser standard to
discharge the obligation.

3A Relationship with Electrical Safety Act 2002

(1) This section applies if—
   (a) this Act, in the absence of this section, would have application in particular circumstances; and
   (b) the Electrical Safety Act 2002 also has application in the circumstances.

(2) This Act does not have application in the circumstances to the extent that the Electrical Safety Act 2002 has application.

(3) Without limiting subsection (2), to the extent that this Act would impose on a person a workplace health and safety obligation that is concurrent with an electrical safety obligation imposed on the person under the Electrical Safety Act 2002, the workplace health and safety obligation does not apply to the person.

Example for subsection (3)—

Section 28 of this Act imposes an obligation on an employer to ensure the workplace health and safety of each of the employer’s workers at work. Under the Electrical Safety Act 2002, an obligation is imposed on an employer to ensure the employer’s business or undertaking is conducted in a way that is electrically safe. Accordingly, the employer’s obligation under this Act to ensure the workplace health and safety of each of the employer’s workers at work does not include an obligation to ensure the employer’s business or undertaking is conducted in a way that is electrically safe.

4 Act binds all persons

This Act binds all persons, including the State and, so far as the legislative power of the Parliament permits, the Commonwealth and the other States.
5 What does this Act apply to?
This Act applies to all workplaces, workplace activities and specified high risk plant.

6 Who does this Act apply to?
This Act applies to—
(a) everyone who may affect the health and safety of others because of workplaces, workplace activities or specified high risk plant;
and
(b) everyone whose health and safety may be affected by workplaces, workplace activities or specified high risk plant.

Division 3—Objective of Act

7 Objective of Act
(1) The objective of this Act is to prevent a person’s death, injury or illness being caused by a workplace, by workplace activities or by specified high risk plant.

Example of an illness caused by a workplace—
Asthma caused by inhaling spray paint mist from a neighbouring workplace.

Example of an illness caused by a workplace activity—
Carbon monoxide poisoning caused by a liquefied petroleum gas operated forklift being used in a coldroom.

Example of an illness caused by specified high risk plant—
Legionnaire’s disease caused by inhaling legionella bacteria from the contaminated cooling tower of an air conditioning unit.

(2) The objective is achieved by preventing or minimising a person’s exposure to the risk of death, injury or illness caused by a workplace, by workplace activities or by specified high risk plant.

(3) This Act establishes a framework for preventing or minimising exposure to risk by—
(a) imposing workplace health and safety obligations on certain persons who may affect the health and safety of others by their
acts or omissions; and

(b) establishing benchmarks for industry through the making of regulations and advisory standards; and

(c) establishing a workplace health and safety board—
    (i) to allow industry to participate in developing strategies for improving workplace health and safety; and
    (ii) to promote community awareness about workplace health and safety; and

(d) providing for industry participation in workplace health and safety by industry developing their own codes of practice; and

(e) providing for the election of workplace health and safety representatives, and the establishment of workplace health and safety committees, to foster cooperation between employers, principal contractors, and workers; and

(f) providing for the appointment of—
    (i) workplace health and safety officers to assist employers and principal contractors to manage workplace health and safety; and
    (ii) accredited providers to assist industry in managing particular risks; and
    (iii) inspectors to monitor and enforce compliance with this Act.

(4) The achievement of this Act’s objective will help—

(a) reduce the human cost to individuals, families and the community caused by these deaths, injuries and illnesses; and

(b) reduce the financial burden on individuals, families and the community caused by these deaths, injuries and illnesses; and

(c) reduce the burden on the workers’ compensation scheme caused
by these deaths, injuries and illnesses, which in turn reduces
costs imposed on industry; and

(d) maintain the community standard for workplace health and
safety, which is eroded when persons gain an unfair competitive
advantage by not implementing appropriate standards.

Division 4—Interpretation

Subdivision 1—Dictionary

8 Definitions—the dictionary

The dictionary in schedule 3 defines particular words used in this Act.

Subdivision 2—Other important terms

9 What is a “workplace”?

(1) A “workplace” is any place where work is, is to be, or is likely to be,
performed by a worker, self-employed person or employer.

Examples of subsection (1)—
1. A construction workplace.
2. A vessel used for teaching members of the public to scuba dive.
3. A vehicle supplied by an employer for use by a worker in the performance of work.

(2) A place may be a “workplace” even though it does not have to be
registered or notified as a workplace under a regulation.

Example of subsection (2)—
If the construction of a building for which the cost of building and construction work is
less than the amount prescribed under a regulation, the construction does not have to be
notified. Nevertheless, the place where the building is being constructed is a workplace
for this Act.

10 Who is an “employer”?
(1) An “employer” is a person who, in the course of the person’s business or undertaking, engages someone else to do work, other than under a contract for service, for or at the direction of the person.

(2) For this section, a person “engages someone else” to do work even though the person engaged works on a voluntary basis.

(3) For an apprentice or trainee who is employed by a group training organisation, the employer is-
(a) when the apprentice or trainee is engaged to do work for a host employer—the host employer; or
(b) otherwise—the group training organisation.

(4) In this section—
“group training organisation” means a group training organisation under the Training and Employment Act 2000.
“host employer” means a person who contracts with a group training organisation for the training of apprentices and trainees.

11 Who is a “worker” and who is not?

(1) A person is a “worker” if the person does work, other than under a contract for service, for or at the direction of an employer.

   Example of subsection (1)—
   A subcontractor works under a contract for service and is not a worker for this Act.

(2) A person may be a “worker” even though the person is not paid for work done by the person.

(3) However, a person is not a “worker” merely because the person does work for an organisation of which the person is a member.
12 Who is a “self-employed person”?

A “self-employed person” is a person who—
(a) performs work for gain or reward; and
(b) is not an employer or worker.

13 Who is the “principal contractor”?

(1) The “principal contractor” for a construction workplace (other than a construction workplace for domestic premises) is—
(a) the person appointed as principal contractor by the owner of the workplace; or
(b) if no principal contractor is appointed—the owner of the workplace.

(2) The “principal contractor” for a construction workplace for domestic premises is the person in control of building or demolition work at the workplace.

14 What is a “construction workplace”?

(1) A “construction workplace” is a workplace where building work, civil construction work or demolition work (“construction work”) is done.1

(2) A workplace becomes a construction workplace from the beginning of the day when construction work starts at the workplace.

(3) A workplace stops being a construction workplace—
(a) when the construction work at the workplace is finished and possession of the workplace is returned to the owner of the workplace; or
(b) if the owner remains in possession of the workplace while the work is done—when the construction work at the workplace is finished.
(4) In this section—

“building work” 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.

15 When is plant or a substance not “used properly”? 

Plant or a substance is not “used properly” if it is used without regard to available appropriate information or advice about its use.

1 “Building work”, “civil construction work” and “demolition work” are terms defined in the dictionary.