

HEALTH AND SAFETY AT WORK ACT 1996

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FIJI

ACT NO. 4 OF 1996

I assent.

[LS.]

K. K. T. MARA
President

[28 June 1996]

AN ACT

TO-

- (1) REFORM THE LAW RELATING TO THE HEALTH AND SAFETY OF WORKERS, AND OTHER PEOPLE AT WORK OR AFFECTED BY THE WORK OF OTHER PEOPLE;
- (2) PROVIDE CLEAR OBJECTIVES, OBLIGATIONS AND FUNCTIONS WHICH COVER EVERY WORKPLACE;
- (3) SET OUT THE ROLES OF EMPLOYERS, INCLUDING WORKERS, SELF-EMPLOYED PERSONS, MANUFACTURERS, DESIGNERS, SUPPLIERS, INSTALLERS, INSPECTORS AND PROVIDES METHODS FOR THE DEVELOPMENT OF DETAILED STANDARDS AND CODES OF PRACTICE; AND
- (4) PROVIDE FOR THE CONSOLIDATION AND PROGRESSIVE REPLACEMENT OF THE ASSOCIATED HEALTH AND SAFETY LEGISLATIONS AS DEFINED AND RELATED MATTERS.

ENACTED by the Parliament of Fiji–

PART I - PRELIMINARY

Short title

1. This Act may be cited as the Health and Safety at Work Act, 1996.

Commencement

2. This Act shall enter into force on the day appointed by the Minister and published in the *Fiji Republic Gazette*.

Application of Act

3.(1) This Act applies to all workplaces in Fiji including territorial waters, land and airspace of Fiji, except those workplaces or operations connected with the Mining Act, Quarries Act, Explosives Act, and Petroleum (Exploration and Exploitation) Act.

(2) The Minister may, after consultation with the Minister responsible for mining and quarries, by declaration published in the *Gazette*, extend all or part of the provisions of this Act to cover workplaces or operations connected with all or any of the legislation mentioned in subsection (1) of this Section.

(3) This Act also applies to workplaces within a Fiji registered or Government owned ship or aircraft of any kind, whether or not the ship or aircraft is within the territorial waters, land or airspace of Fiji.

(4) In relation to the notification, assessment and control of chemicals and related matters the Act applies to the people of Fiji and the bio physical environment and related matters.

(5) (a) Nothing in this Act requires or permits a person to take any action, or to refrain from taking any action, that would be, or could reasonably be expected to be, prejudicial to Fiji's national security or defence or to an existing or future covert operation or dangerous operation of the Fiji Military Force or the Fiji Police Force.

(b) Without limiting the generality of subsection (5)(a), of this Section, the Minister may, after consultation with the Minister responsible for national defence and security, by notice in the *Gazette*, declare that specified provisions of this Act do not apply, or apply subject to such modifications and adaptations as are set out in the declarations, in relation to-

- (i) specified operations or members of the Fiji Military Force or Police Force; or

- (ii) a workplace under the control of the Minister responsible for national defence and security and such declaration has effect accordingly.

(6) This Act does not apply to domestic servants.

Act to bind Government

4. This Act shall bind the Government, including Government departments and statutory authorities.

Definitions

5.—(1) In this Act, unless the contrary intention appears-

"accident" means an event occurring at, or a situation arising in, a workplace which results in an injury or disease;

"approved" means approved by the Minister or the Chief Health and Safety Inspector or the Board;

"associated health and safety legislation" means the legislation declared by Part X to be associated health and safety legislation;

"Board" means the National Occupational Health and Safety Advisory Board constituted by this Act;

"chemical" means a chemical as defined in the regulations and includes a pesticide;

"Chief Health and Safety Inspector" means the person appointed under subsection (1) of Section 40 of this Act as Chief Health and Safety Inspector and includes the Deputy Chief Health and Safety Inspector(s) appointed under subsection (3) of Section 40 of this Act;

"Code of practice" means a code of practice under Section 63 of this Act;

"contract of service" means any contract, whether oral or in writing, whether expressed or implied, or under a law of Fiji or not and includes-

- (a) a contract under which a person is employed by another;
- (b) a contract of apprenticeship;
- (c) a contract arrangement or understanding under which a person receives on-the-job training in a trade or vocation from another;

"Court" means the Magistrate Court constituted under Section 3 of the Magistrate's Courts Act or the High Court of Fiji, as appropriate;

"Deputy" means a Deputy Chief Health and Safety Inspector appointed under subsection (3) of Section 40 of this Act;

"disease" includes a physical or mental ailment disorder, defect or morbid condition, whether of sudden or gradual development and whether contracted before or after the commencement of this Act;

"domestic premises" means premises occupied as a private dwelling;

"domestic servant" means a person defined as a domestic servant under the Employment Act;

"employer" means a corporation or an individual by whom a worker is employed under a contract of service. It includes Government Departments and statutory authorities;

"Fund" means the Occupational Health and Safety Education and Accident Prevention Fund established under Part V;

"Gazette" means the *Fiji Republic Gazette*;

"hazard" means any agent or situation capable of potentially injuring or compromising the health and safety of a person or causing damage to plant or premises;

"health and safety" means health and safety at work;

"health and safety legislation" means-

- (a) the provisions of this Act; and
- (b) the associated health and safety legislation;

"health and safety committee" means a health and safety committee established under Part III;

"health and safety representative" means a health and safety representative appointed under Part III;

"improvement notice" means an improvement notice under Section 46 of this Act;

"incident" means an event occurring at, or a situation arising in, a workplace which may or may not result in an injury or disease. It includes an accident or a dangerous occurrence;

"injury", in relation to a worker, means a physical or mental injury arising out of or in the course of his or her work and includes-

- (a) a disease; and
- (b) the aggravation, acceleration, exacerbation, recurrence or deterioration of a pre-existing injury or disease;

"Inspector" means a Health and Safety Inspector appointed under Section 41 of this Act and includes the Chief Health and Safety Inspector or his or her Deputy;

"Inspectorate" means the Health and Safety Inspectorate of the Ministry. It comprises all the persons gazetted by the Minister to be Inspectors under this Act;

"ionising radiation" means ionising radiation as defined in the regulations or in the Ionising Radiations Act;

"lease" means any kind of agreement or arrangement under which payments are or are to be made for the supply of goods for use by any person;

"manufacture" includes design;

"Material Safety Data Sheet" means a Material Safety Data Sheet as defined in the regulations;

"Minister" means the Minister responsible for the administration of this Act;

"Ministry" means the Ministry responsible for the administration of this Act;

"penalty notice" means a penalty notice under Section 48 of this Act;

"Permanent Secretary" means the Permanent Secretary for the "Ministry";

"pesticides" means pesticides as defined in the regulations or in the Pesticides Act;

"petroleum" means petroleum as defined in the regulations or in the Petroleum Act;

"plant" includes-

- (a) any machinery, equipment, appliance, implement or tool;
- (b) any component, fitting or accessory used in conjunction with any machinery, equipment, appliance, implement or tool;
- (c) steam boilers, pressure vessels, hoists, lifts, cranes, lifting equipment, handling devices, amusement rides or scaffolding;

"plant for use at work" means any plant designed for use or operation (whether exclusively or not) by persons at work, and includes any article designed for use as a component in, or an accessory to, any such plant;

"premises" includes-

- (a) any land, building or part of any building;
- (b) any vehicle, ship or aircraft;
- (c) any installation on land, on the bed of any waters or floating on any waters;
- (d) any tent or movable structure; and
- (e) any workplace;

"prohibition notice" means a prohibition notice under Section 47 of this Act;

"registered" means registered under the relevant marine or aviation legislation of Fiji;

"regulation" means a regulation under this Act;

"risk" means the probability that a hazard's potential to cause injury or compromise

the health and safety of a person or to cause damage to plant or premises may become actual;

"self-employed person" means an individual who works for gain or reward otherwise than under a contract of service;

"ship" includes a boat, vessel, hovercraft or craft of any kind;

"substance" means a natural or artificial substance, whether in solid, liquid, gas or vapour form. It includes a chemical;

"substance for use at work" means any substance intended for use (whether exclusively or not) by persons at work;

"suitably qualified person" means a person deemed by the Public Service Commission to satisfy the requirements for relevant occupational health and safety training, education and experience;

"supply", in relation to any plant or substance, means supply or resupply the plant or substance by way of sale or financing or credit arrangement whether as principal or agent for another;

"this Act" includes the regulations;

"work" means work as a worker or as a self-employed person;

"worker" means a person who is employed under a contract of service or who works under a contract for service;

"workplace" means any place, whether or not in a building or structure, where workers work.

(2) For the purposes of this Act—

(a) a worker is at work throughout the time when he or she is at his or her workplace, but not otherwise;

and

(b) a self-employed person is at work throughout such time as he or she devotes to work as a self-employed person.

(3) A reference in this Act to—

(a) function includes a reference to a power, authority and duty; and

(b) the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

Non-derogation

6. The provisions of this Act are in addition to and do not derogate from the provisions of any other Act.

Contracting out

7.—(1) This Act applies notwithstanding anything to the contrary contained in any contract or agreement, whether entered into before or after the commencement of this Act.

(2) A contractor agreement which purports to exclude or limit the application of this Act or to exclude or limits the rights or entitlements of a person under this Act is, to that extent, null and void.

(3) A person who urges, prevails on, persuades or offers an inducement to another person to enter into a contract or agreement whereby that other person would, but for this Section, consent or agree to the application of this Act being excluded or limited in respect of that other person, or to waive or limit that other person's rights, benefits or entitlements under this Act, shall be guilty of an offence.

PART II—GENERAL DUTIES RELATING TO HEALTH
AND SAFETY AT WORK

Defence

8.—(1) It shall be a defence to any proceedings, whether in this Part or not, against a person for an offence against this Act for the person to prove that it was not practicable for him or her to comply with the provision of this Act the breach of which constituted the offence.

(2) In this Section, "practicable" in relation to a hazard or risk, means practicable having regard to—

- (a) its severity;
- (b) the state of knowledge about the hazard or risk and the ways of removing or mitigating it;
- (c) the availability and suitability of ways to remove or mitigate it; and
- (d) the cost of removing or mitigating it.

Duties of employers to workers

9.—(1) Every employer shall ensure the health and safety at work of all his or her workers.

(2) Without prejudice to the generality of subsection (1) of this Section, an employer contravenes that subsection if he or she fails—

- (a) to provide and maintain plant and systems of work that are safe and without risks to health;
- (b) to make arrangements for ensuring safety and absence of risks to health in connection with the use, handling, storage or transport of plant and substances;
- (c) to provide, in appropriate languages, such information, instruction, training and supervision as may be necessary to ensure the health and safety at work of his or her workers and to take such steps as are necessary to make available in connection with the use at work of any plant or substance adequate information in appropriate languages—
 - (i) about the use for which the plant is designed and about any conditions necessary to ensure that, when put to that use, the plant will be safe and without risks to health; or

- (ii) about any research, or the results of any relevant tests which have been carried out, on or in connection with the substance and about any conditions necessary to ensure that the substance will be safe and without risks to health when properly used.
- (d) as regards any workplace under the employer's control-
 - (i) to maintain it in a condition that is safe and without risks to health; or
 - (ii) to provide and maintain means of access to and egress from it that are safe and without any such risks;
- (e) to provide and maintain a working environment for his or her workers that is safe and without risks to health and adequate as regards facilities for their welfare at work; or
- (f) to develop, in consultation with workers of the employer, and with such other persons as the employer considers appropriate, a policy, relating to health and safety at work, that will-
 - (i) enable effective cooperation between the employer and the workers in promoting and developing measures to ensure the worker's health and safety at work; and
 - (ii) provide adequate mechanisms for reviewing the effectiveness of the measures or the redesigning of the said policy whenever appropriate.

(3) For the purposes of this Section, any plant or substance is not to be regarded as properly used by a person where it is used without regard to any relevant information or advice relating to its use which has been made available by the person's employer.

(4) Any employer who contravenes or fails to comply with any provision of this Section shall be guilty of an offence and shall be liable to a fine of not more than \$100,000 in the case of a corporation or \$10,000 in any other case.

Duties of employers and self-employed persons to non-workers

10.—(1) Every employer shall ensure that persons not in his or her employment or contracts of service are not exposed to risks to their health or safety arising from the conduct of his or her undertaking while they are at his or her workplace.

(2) Every self-employed person shall ensure that persons not in his or her employment or contracts of service are not exposed to risks to their health or safety arising from the conduct of his or her undertaking while they are at his or her workplace.

(3) Any employer or self-employed person who contravenes or fails to comply with any provision of this Section shall be guilty of an offence and shall be liable to a fine of not more than \$100,000 in the case of a corporation or \$10,000 in any other case.

Duties of persons in control of workplaces etc.

11.—(1) Each person who has, to any extent, control of-

- (a) non-domestic premises which have been made available to persons (not being his or her workers) as a workplace, or the means of access thereto or egress therefrom; or
- (b) any plant or substance in any non-domestic premises which has been provided for the use or operation of persons at work (not being his or her workers), shall ensure that the premises, the means of access thereto or egress therefrom or the plant or substance, as the case may be, are or is safe and without risks to health.

(2) Any person who contravenes or fails to comply with any provision of subsection (1) of this Section shall be guilty of an offence and shall be liable to a fine of not more than \$100,000 in the case of a corporation or \$10,000 in any other case.

(3) Where a person has, by virtue of any contract or lease, an obligation of any extent in relation to-

- (a) the maintenance or repair of any premises referred to in paragraph (a) of subsection (1) of this Section or any means of access thereto or egress therefrom; or
- (b) the safety of, or the absence of risks to health arising from, any plant or substance referred to in paragraph (b) of subsection (1) of this Section,

that person shall be treated, for the purposes of subsection (1) of this Section, as being a person who has control of the thing to which his or her obligation extends.

(4) A reference in this Section to a person having control of anything is a reference to a person having control of the thing in connection with the carrying on by him or her of a trade, business or other undertaking, (whether for profit or not).

Duties of manufactures, importers, suppliers, and installers

12.—(1) A person who manufactures, imports or supplies any plant or substance for use at a workplace shall-

- (a) ensure that the plant, or substance is safe and without risks to health when properly used;

- (b) carry out or arrange for the carrying out of such research, testing and examination as may be necessary for the purpose of the discovery and the elimination or minimisation of any risks to health or safety to which the plant or substance may give rise; and
- (c) take such steps as are necessary to make available in connection with the use of the plant or substance at work adequate information-
 - (i) about the use for which the plant is designed and about any conditions necessary to ensure that, when put to that use, the plant will be safe and without risks to health; or
 - (ii) about the results of any relevant tests which have been carried out on or in connection with the substance and about any conditions necessary to ensure that the substance will be safe and without risks to health when properly used.

(2) A person who erects or installs any plant for use at work in any workplace where that plant is to be used by persons at work shall ensure that nothing about the way in which it is erected or installed makes it unsafe or a risk to health when properly used.

(3) Nothing in this Section shall be taken to require a person to repeat any research, testing or examination which has been carried out otherwise than by him or her or at his or her instance, in so far as it is reasonable for him or her to rely on the results thereof for the purposes of this Section.

(4) For the purposes of this Section, any plant or substance is not to be regarded as properly used where it is used without regard to any relevant information or advice relating to its use which has been made available by a person by whom it was manufactured or supplied.

(5) Without limiting the generality of this Section a person who manufactures or imports or supplies a chemical product for use in a workplace shall have a Material Safety Data Sheet for that chemical product and such other details as are prescribed.

(6) Any person who contravenes or fails to comply with any provision of this Section shall be guilty of an offence and shall be liable to a fine of not more than \$100,000 in the case of a corporation or \$10,000 in any other case.

Duties of workers

13.—(1) Every worker shall, at all times while at work, take all reasonable care-

- (a) not to take any action, or make any omission, that creates a risk, or increases an existing risk, to the health or safety of any worker including himself or herself or of other persons (whether workers or not) at his or her workplace; and

- (b) in respect of any duty or obligation imposed on the worker's employer, or on any other person by or under this Act, to cooperate with the employer, or that other person, to the extent necessary to enable the employer or other person to fulfil that duty or obligation; and
- (c) to use equipment, in accordance with any instructions given by the worker's employer consistent with its safe and proper use, that is-
 - (i) supplied to the worker by the employer and;
 - (ii) necessary to protect the health and safety of the Worker, or of other persons (whether workers or not) at the worker's workplace.

(2) Any worker who contravenes or fails to comply with any provision of subsection (1) of this Section shall be guilty of an offence and shall be liable to a fine of not more than \$1,000.

Duties applicable to all persons

14.—(1) A person shall not intentionally or recklessly interfere with or misuse anything provided in the interests of health and safety in pursuance of this Act or the associated health and safety legislation.

(2) Any person who contravenes or fails to comply with any provision of subsection (1) of this Section shall be guilty of an offence and shall be liable to a fine of not more than \$5,000.

Civil liability not affected by Part II

15. 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;
- (b) conferring a defence to an action in any civil proceedings or as otherwise affecting a right of action in any civil proceedings; or
- (c) affecting the extent (if any) to which a right of action arises or civil proceedings may be taken with respect to breaches of duties imposed by or under the associated health and safety legislation.

PART III – WORKPLACE ARRANGEMENTS

Health and safety representatives

16.—(1) A majority of workers at a workplace where less than twenty workers are employed, may appoint a health and safety representative for that workplace.

(2) Any disagreement about the appointment of a health and safety representative is to be resolved in accordance with the regulations.

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

- (a) ceasing to be a worker;
- (b) resigning as a health and safety representative;
- (c) being disqualified under Section 22 of this Act.

Functions of health and safety representatives

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

- (a) inspect the whole or any part of the workplace—
 - (i) at any time after giving reasonable notice to the employer; and
 - (ii) immediately in the event of any accident, hazardous situation, dangerous occurrence or immediate threat or risk to the health and safety of any person and facilitate necessary procedures under Section 25 of this Act;
- (b) accompany any Inspector during an inspection of workplace;
- (c) with the consent of the worker, be present at any interview between a worker and an Inspector or between the employer or the representative of the employer and a worker concerning health and safety;
- (d) investigate complaints relating to occupational health and safety made by workers in the workplace;
- (e) if there is no health and safety committee in respect of the employer's workers at the workplace - represent the workers in the group in consultations with the employer concerning the development, implementation and review of measures to ensure the health and safety of the workers in the group;
- (f) where a health and safety committee has been established in respect of the employer's workers at the workplace - refer to the committee any matters that he or she thinks should be considered by the committee and examine any of the records of that committee;

- (g) consult and cooperate with his or her employer on all matters relating to the health and safety of persons in the workplace; and
- (h) liaise with the workers regarding matters concerning the health and safety of persons in the workplace.

(2) A health and safety representative shall not be present at any interview of a kind referred to in paragraph (c) of subsection (1) of this Section without the consent of the worker.

(3) No provision of this Act shall be construed as imposing any duty upon a health and safety representative in the capacity of health and safety representative. A health and safety representative incurs no civil liability arising from his or her performance of, or his or her failure to perform, any function of a health and safety representative under this Act.

Establishment of health and safety committees

18.—(1) An employer who employs twenty or more workers at a workplace shall establish a health and safety committee for that workplace.

(2) Any employer who contravenes or fails to comply with the provision of subsection (1) of this Section shall be guilty of an offence and shall be liable to a fine of not more than \$ 10,000 in the case of a Corporation or \$5,000 in any other case.

Composition of health and safety committee

19.—(1) A health and safety committee for a workplace shall consist of-

- (a) the person or persons elected by the workers for the purposes of this Section; and
- (b) the person or persons nominated by the employer for the purposes of this Section.

(2) At least half of the members of a health and safety committee shall be persons elected in accordance with the regulations by the workers for the purposes of this Section.

(3) The size and operation of a health and safety committee shall be in accordance with the regulations.

(4) A person is not eligible for election or appointment as a member of a health and safety committee for a workplace unless he or she is a worker who works at the workplace, and the person or persons nominated by the employer shall be, or shall include, a person or persons having the authority of the employer to give effect to such matters as the committee might reasonably resolve in connection with the health and safety of persons at the workplace.

(5) The health and safety committee may determine its own procedures.

(6) Any person who contravenes or fails to comply with any provision of this Section shall be guilty of an offence and shall be liable to a fine of not more than \$10,000 in the case of a corporation or \$5,000 in any other case.

Functions of health and safety committees

20.—(1) The functions of a health and safety committee are to;

- (a) facilitate cooperation between the employer and the workers in relation to health and safety at work;
- (b) assist in the formulation, review and dissemination (in such languages as are appropriate) to workers of the health and safety practices, procedures and policies that are to be followed at the workplace;
- (c) investigate any matter at the workplace—
 - (i) which a member of the committee or a person employed thereat considers is not safe or is a risk to health; and
 - (ii) which has been brought to the attention of the employer;
- (d) attempt to resolve any such matter but, if unable to do so, shall request an Inspector to undertake an inspection of the workplace for the purpose; and
- (e) have such other functions as are prescribed.

(2) An inspection by an Inspector to resolve a matter pursuant to paragraph (d) of subsection (1) of this Section shall be undertaken as soon as possible after the request is made by the health and safety committee.

(3) No provision of this Act shall be construed as imposing any duty upon a health and safety committee or its members in tire capacity of health and safety committee or its members. A member of a health and safety committee incurs no civil liability arising from his or her performance of, or his or her failure to perform, any function of a health and safety committee under this Act.

Responsibilities of employers to health and safety representatives and committees

21.—(1) An employer shall -

- (a) consult health and safety representatives and health and safety committees on the occupational health and safety practices, procedures or policies that are to be followed at a workplace and on any proposed changes to these practices, procedures or policies;

- (b) at the request of the worker, permit a health and safety representative or committee member to be present at any interview concerning occupational health or safety between the employer (or a representative of the employer) and a worker in the workplace that the health and safety representative or committee represents;
- (c) permit a health and safety representative or committee member to accompany an Inspector during an inspection of the workplace;
- (d) permit a health and safety representative or a health and safety committee member to have access to such information as the employer possesses-
 - (i) relating to hazard and associated risks that arise;
 - (ii) concerning the health and safety of the workers of the employer, and, when requested to do so, supply a copy of that information to the health and safety representative or committee;
- (e) immediately notify a health and safety representative or committee member of the occurrence of an accident, injury, dangerous occurrence, immediate threat or risk or hazardous situation that affects or may affect any worker that the health and safety representative or committee represents; and
- (f) provide such other facilities and assistance to health and safety representatives or committees as are necessary or prescribed to enable them to perform their functions under this Act.

(2) An employer is not required to give to a health and safety representative or a committee member under paragraph (d) of subsection (1) of this Section-

- (a) information that is privileged on the ground of legal professional privilege;
- (b) personal information regarding the health of a worker without the consent of the worker; or
- (c) information that is relevant to proceedings that have been commenced under this Act.

(3) An employer shall permit health and safety representatives or members of a health and safety committee of the workplace which the employer manages to take such time off work with pay as is necessary or prescribed for the purposes of performing their functions or duties or taking part in any course of training relating to occupational health and safety which is approved by the Minister on the recommendation of the Board.

Disqualification of health and safety representatives or committee members

22.—(1) Any employer or worker may apply to the Permanent Secretary to have a health and safety representative or a committee member disqualified on any one or more of the following grounds:

- (a) That the health and safety representative or committee member has performed any function or duty under this Part-
 - (i) with the intention only of causing harm to the employer or the employer's undertaking; or
 - (ii) unreasonably, capriciously or otherwise than for the purpose for which the power was conferred on the representative or committee member;
- (b) That the health and safety representative or committee member has intentionally used or disclosed to another person any information, acquired from the employer by the representative or committee member, for a purpose which is not connected with the performance of any function or duty under this Part;
- (c) That the person is considered to no longer represent the majority of the workers.

(2) Where the Permanent Secretary is satisfied that a health and safety representative or committee member has acted in the manner referred to in subsection (1) of this Section he or she may disqualify the health and safety representative or committee member for a specified period or permanently.

(3) For the purpose of determining what (if any) action he or she should take under subsection (2) of this Section, the Permanent Secretary shall take into account-

- (a) what (if any) harm was caused to the employer or the employer's undertaking by or as a result of the action of the health and safety representative or committee member;
- (b) the past record of the health and safety representative or committee member in performing any functions and duties under this Part;
- (c) whether the action of the health and safety representative or committee member was contrary to the public interest;
- (d) the health and safety representative's or committee member's submission;

- (e) the Inspector's report (if any) on this matter, and
- (f) may take into account any other matters he or she considers relevant.

Discrimination against workers

23.—(1) An employer shall not-

- (a) dismiss a worker; or
- (b) act in any way detrimental to a worker in the worker's employment with the employer; for the reason only that worker-
 - (i) assists or has assisted or gives or has given information to an Inspector;
 - (ii) makes or has made a reasonable complaint in relation to health and safety to the employer or one of the Inspectors;
 - (iii) ceases work under Section 25 of this Act; or
 - (iv) has exercised his or her functions as a health and safety representative or a member of a health and safety committee.

(2) Any employer who contravenes or fails to comply with any provision of subsection (1) of this Section shall be guilty of an offence and shall be liable to a fine of not more than \$10,000 in the case of a corporation or \$5,000 in any other case.

Remedies for discrimination against workers

24. Where a person is convicted of an offence against Section 23 of this Act, the court by which he or she is convicted may, in addition to imposing a penalty on the person-

- (a) order him or her to pay within a specified period to the person against whom the offender discriminated, such amount as it thinks fit to compensate that person; or
- (b) order that the worker be reinstated or re-employed in the worker's former position or, where that position is not available, in a similar position, or both.

Immediate threat

25.—(1) Where a worker has reasonable cause to believe that there is an immediate threat to health or safety unless the worker ceases to perform particular work, the worker shall -

- (a) inform a person (in this Section called the "supervisor") supervising the worker or workers in the performance of the work of the threat to health or safety; or

- (b) if no supervisor can be contacted immediately — cease work in a safe manner, and, as soon as practicable, inform a supervisor that the work has ceased.

(2) Where the supervisor is informed under paragraph (a) of subsection (1) of this Section of a threat to the health or safety of one or more of the workers, the supervisor shall take such action as he or she considers appropriate to remove that threat, and any such action may include directing the worker or workers to cease, in a safe manner, to perform the work.

- (3) Where there is disagreement between a worker and the supervisor as to whether-

- (a) there was an immediate threat; or
- (b) the action taken was sufficient to remedy the threat,

the disagreement may be referred by either party to an Inspector for investigation.

(4) An Inspector as soon as possible after a request is made shall carry out an investigation of the work that is the subject of the disagreement, and the Inspector conducting the investigation shall make such decisions, and exercise such powers under this Act, as the Inspector considers necessary, in relation to the work.

(5) During a period in which a worker has under subsection (1) or subsection (2) of this Section, ceased work, his or her employer may assign him or her to alternative work within the worker's contract of service.

(6) For workplaces within a Fiji registered or Government owned ship or aircraft of any kind, when the ship or aircraft is moving within or outside the territorial waters or airspace of Fiji or when berthed in a seaport or airport not within the territorial waters or land of Fiji, the "supervisor" referred to under this Section shall be the ship captain or aircraft pilot, whichever applicable. In these cases-

- (a) the ship captain or aircraft pilot shall resolve an immediate threat issue arising from his or her respective workplace in his or her capacity as a ship captain or aircraft pilot; and
- (b) the provisions under subsections (3) and (4) of this Section shall not apply; and
- (c) the ship captain or aircraft pilot shall relay to the Chief Health and Safety Inspector his or her decision on any immediate threat issue as soon as possible on arrival in a Fiji sea port or airport.”

PART IV - OCCUPATIONAL HEALTH AND SAFETY STATISTICS

*Notification of accidents and other matters***26.—(1)** Where-

- (a) an accident occurs at a workplace, whether or not it causes the death of, or bodily injury to, any person; or
- (b) any other matter occurs at or in relation to a workplace which affects the health or safety of any person,
being an accident or other matter which is required by the regulations to be notified under this Section:
- (c) except as provided by paragraph (d) of this subsection, the employer at the workplace; or
- (d) such other person as is prescribed,

shall give notice of the accident or other matter in accordance with subsection (3) of this Section.

(2) Any person who contravenes or fails to comply with any provision of subsection (1) of this Section shall be guilty of an offence and shall be liable to a fine of not more than \$10,000 in the case of a corporation or \$5,000 in any other case.

(3) A notice of an accident or other matter referred to in subsection (1) of this Section shall be given to such person, within such time and in such manner as are prescribed.

Notification under associated health and safety legislation

27. A provision of the associated health and safety legislation which requires notice to be given of an accident or other matters shall, if the regulations so provide, not have any effect.

Record of accidents and other matters

28. Subject to Section 26 of this Act, every employer at the workplace or such other persons as are prescribe shall maintain, in the prescribed form, a record of accidents and other matters as prescribed by the regulations.

Notification of certain workplaces

29.—(1) Where there are twenty or more persons employed at a workplace, being a workplace in respect of which notice is required to be given by regulations -

- (a) except as provided by paragraph (b) of this subsection, the employer at the workplace; or
- (b) such other person as is prescribed,

shall give notice each year of the prescribed particulars of the workplace in accordance with subsection (3) of this Section.

(2) Any person who contravenes or fails to comply with any provision of subsection (1) of this Section shall be guilty of an offence and shall be liable to a fine of not more than \$5,000.

(3) A notice in respect of a workplace referred to in subsection (1) of this Section shall-

- (a) be given to such persons, within such time and in such manner as are prescribed; and
- (b) be accompanied by the prescribed fee.

(4) Without limiting Section 62 of this Act, the prescribed fee under subsection (3) of this Section may differ according to the nature of the workplace in respect of which the fee is payable.

PART V – OCCUPATIONAL HEALTH AND SAFETY EDUCATION AND ACCIDENT PREVENTION FUND

The Fund

30.—(1) There shall be established in the Special Deposits Account in the Treasury an Occupational Health and Safety Education and Accident Prevention Fund.

(2) The Fund shall consist of-

- (a) the fees paid pursuant to Section 29 of this Act; and
- (b) any money provided by Parliament for the purposes of the Fund or required to be paid into the Fund by or under this or any other Act.

(3) There shall be paid out of the Fund all amounts payable under Section 31 of this Act and all other amounts required to be paid out of the Fund by or under this or any other Act.

Payments of Fund

31. The money standing to the credit of the Fund may be applied by the Minister, on the advise of the Board, for the purposes of-

- (a) health and safety education or training or research; and
- (b) ensuring or promoting the health safety of persons at workplaces.

PART VI – NATIONAL OCCUPATIONAL HEALTH AND SAFETY
ADVISORY BOARD

Advisory Board

32.—(1) There is established by this Act a board by the name of the National Occupational Health and Safety Advisory Board.

(2) The Board shall consist of the Permanent Secretary or his Deputy, who shall be its Chairperson and two Deputy Chairpersons one each nominated from the most representative employers and workers organisations for the Minister's approval and not more than 15 other members appointed by the Minister.

(3) The Minister shall invite the most representative employers and workers organisations to submit to him or her the name or names of a person or persons they recommend to be appointed as a member or members.

(4) Without limiting his or her discretion under this Section, the Minister shall, before appointing a person to be a member, consider all recommendations made to him or her.

(5) The Minister shall appoint to the Board, five persons recommended by the most representative workers' organisations and five persons recommended by the most representative employers' organisations to reflect the diverse economic sectors in Fiji. The Minister may also request from the Ministers responsible for Health, Mining, Agriculture, Transport and Civil Aviation, Environment or other relevant Ministers, a representative to be appointed to the Board.

(6) The Chairperson of the Board shall appoint a suitable person from the Inspectorate to assist and be secretary to the Board.

(7) The Board is empowered to invite one or more persons it considers appropriate, to act in an advisory capacity to the Board, in any of its deliberation.

Term of office

33. Subject to this Part, a member or a Deputy Chairperson (other than the Chairperson) holds office for such period, not exceeding 2 years, as is specified in the instrument of his or her appointment, but is eligible for re-appointment.

Leave, resignation and dismissal of members

34.—(1) The Minister may grant leave of absence to a member on such terms and conditions as the Minister considers appropriate.

(2) A member may resign his or her office by writing signed by him or her and delivered to the Minister.

(3) The Minister may terminate the appointment of a member for inability, inefficiency, misbehaviour or physical or mental incapacity.

(4) The Minister shall terminate the appointment of a member who-

- (a) is absent, except on leave granted by the Board, or under subsection (1) of this Section by the Minister, from 3 consecutive meetings of the Board; or
- (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit.

Functions and powers of Board

35.—(1) The functions of the Board are-

- (a) to advise the Minister on matters relating to occupational health and safety;
- (b) to inquire into and report to the Minister on matters referred to it by the Minister;
- (c) in liaison with the Inspectorate, to facilitate the development of national health and safety regulations, standards and approval of codes of practice for the Minister's consideration;
and
- (d) such other functions as are imposed on it by or under this or any other Act.

(2) The Board has powers necessary to carry out its functions or as are conferred on it by this or any other Act.

Advisory Committees

36.—(1) The Board may establish committees to advise the Board on matters affecting health and safety.

(2) An advisory committee may, with the consent of the Minister, be comprised wholly or partly of persons who are not members of the Board.

Remuneration

37. A member of the Board or a member of an advisory committee may be paid such remuneration and allowances as the Minister from time to time directs.

Meetings of Board

38.—(1) The Minister or the Chairperson shall call such meetings of the Board as are necessary for the performance of its functions and the exercise of its powers.

(2) The Chairperson or in his absence, a Deputy Chairperson, shall preside at all meetings of the Board.

- (3) At a meeting of the Board-
- (a) the Chairperson or a Deputy Chairperson and two thirds of the other members for the time being holding office constitute a quorum; and
 - (b) questions arising shall be determined by a majority votes of the members present and voting and in the event of an equality of votes the Chairperson shall have a casting vote as well as a deliberative vote.
- (4) Subject to this Act, the Board may regulate its own procedure.
- (5) The Board shall keep proper records of its proceedings.

Annual Report of Board

39.—(1) The Board shall prepare and submit to the Minister a report of its operations annually.

- (2) The Board's annual report shall be included in the Ministry's annual report.

PART VII - HEALTH AND SAFETY INSPECTORS

Chief Health and Safety Inspector

40.—(1) The Minister shall appoint a person to be the Chief Health and Safety Inspector of the Inspectorate, responsible for the administration of this Act.

(2) Subject to subsection (1) of this Section the Chief Health and Safety Inspector is to-

- (a) advise the Minister on national, regional and international matters relating to health and safety administration and policy and related matters affecting Fiji;
- (b) be responsible for the administration and operation of the Inspectorate; and
- (c) guide the Board in its deliberation on matters referred to the Board by the Minister.

(3) The Minister shall also appoint, on the recommendation of the Chief Inspector, one or more suitably qualified persons to be the Deputy Chief Health and Safety Inspector(s) as appropriate, to assist the Chief Health and Safety Inspector in the daily administration of this Act.

(4) The appointments of the Chief Health and Safety Inspector and the Deputy Chief Health and Safety Inspector(s) shall be appropriately given notice in the *Gazette* by the Minister responsible for the Inspectorate.

Health and Safety Inspectors

41.—(1) The Minister, on the recommendation of the Chief Health and Safety Inspector, may appoint such suitably qualified persons to be Health and Safety Inspectors.

(2) The appointments of all Health and Safety Inspectors shall be appropriately given notice in the Gazette by the Minister responsible for the Inspectorate.

(3) The Minister shall furnish every Inspector with a certificate of appointment as evidence of an Inspector's appointment under Sections 40 or 41 of this Act and an identification card which an Inspector shall produce—

- (a) if practicable, on each occasion before he or she proceeds to act pursuant to this Act; and
- (b) on demand.

(4) Any person who forges or counterfeits an identification card or make use of any forged, counterfeited or false identification card or impersonates the Inspector named in an identification card or falsely pretends to be an Inspector shall be guilty of an offence and shall be liable to a fine of not more than \$5,000.

Functions of Inspectors

42. The functions of the Inspectors are—

- (a) to encourage employers and workers to consult with each other about safe or healthy work practices in the workplace;
- (b) to advise and assist employers and workers on health and safety matters generally and particularly in the performance of the health and safety obligations under this or any other Act and advise them of the assistance available to them in carrying out their obligations;
- (c) to provide information, advise, education and training to employer and worker groups and government departments and authorities on matters to which this Act relates;
- (d) to promote a co-ordinated and integrated approach by government authorities to inspection responsibilities in health and safety;
- (e) to assist in formulating policies and strategies relating to health and safety matters;
- (f) to assist in developing national health and safety regulations, standards and codes of practice for the deliberation, where appropriate, of the Board;
- (g) to assist the Board in the performance of its function under this Act;

- (h) to facilitate the monitoring, collecting and analysing of national data on compensable injuries or diseases or other relevant data in Fiji for the purposes of reviewing the effectiveness of implemented policies and standards and recommending appropriate priorities;
- (i) to enforce compliance with this Act and regulations required by or under this Act to be observed;
- (j) to prosecute persons for offences against this Act or the regulations; and
- (k) such other functions imposed on it by this or any other Act.

Powers of Inspectors

43.—(1) An Inspector may, for the purposes of this Act-

- (a) enter any workplace at any time that the performance of his or her functions under this Act requires such entry;
- (b) when entering any workplace, take with him or her such equipment and materials as he or she considers appropriate;
- (c) conduct such examination and inquiry including the examination of any plant, substance or thing, as he or she considers necessary to ascertain whether there has been compliance with this Act;
- (d) take or remove samples of any substance or thing as may be required for analysis;
- (e) take possession of any plant or thing for further examination or testing or for use as evidence;
- (f) take photographs or measurements or make sketches or recordings;
- (g) require the production of, examine, and take copies or extracts of, any document or part of any document;
- (h) direct that the workplace, or any part of it, be left undisturbed for as long as the Inspector considers necessary;
- (i) interview in the course of an inspection or investigation, either in private or otherwise, as he or she considers appropriate, any person whom he or she finds at a workplace or whom he or she has reasonable grounds to believe is, or was at any time during the past, a worker working at a workplace;

- (j) require any person whom he or she interviews under paragraph (i) of this subsection to answer any questions put to him or her and, if the Inspector considers it appropriate, to verify any such answer by statutory declaration;
- (k) require any person to provide proof of identity;
- (l) require the employer or any person who works at a workplace to render such assistance to the Inspector as the Inspector considers necessary for the performance of his or her functions under this Act;
- (m) exercise such other powers as may be conferred on him or her by the regulations or as may be necessary for the performance of his or her functions under this Act; or
- (n) an Inspector may, by notice in writing, require a person to furnish to him or her such information, in such form, as he or she reasonably requires for the purposes of this Act.

(2) On concluding an investigation, inspection or examination at a workplace an Inspector may give to the employer and any health and safety representative or health and safety committee concerned, information about his or her investigations, inspections or examinations and the steps, if any, he or she proposes to take as a result of that investigation, inspection or examination.

(3) In exercising any of his or her powers under this Act an Inspector may be accompanied by any other person, including a Police Officer, whose assistance the Inspector considers necessary, and that person may do such things as are necessary to assist the Inspector in the performance of his or her functions, and anything so done shall be deemed to have been done by the Inspector.

(4) Where an Inspector takes possession of a substance, plant or thing from a workplace, the occupier or employer at the workplace may appeal to the court against that action or the continued possession by the Ministry of that substance, plant or thing.

(5) No person shall be required to answer a question or give information tending to incriminate himself or herself and be cautioned accordingly.

(6) A person required under subsection (1) of this Section to furnish information who, without lawful excuse, refuses or fails to furnish the information within the time specified in the notice under that subsection or such further time as the Inspector allows, shall be guilty of an offence and shall be liable to a fine of not more than \$10,000 in the case of a corporation or \$5,000 in any other case.

Confidentiality

44.—(1) Where a person performing any function under this Act (including a person assisting an Inspector under Section 43 of this Act) obtains-

- (a) information relating to commercial operations or trade processes;
- (b) information relating to the personal affairs of a person; or
- (c) the name of a person who has made a complaint to an Inspector in relation to health and safety,

the person shall not disclose that information unless-

- (d) the disclosure is necessary for the proper performance of official duties;
- (e) the disclosure is made with the consent of the person who furnished the information or to whom the information relates; or
- (f) the disclosure is required by a court or tribunal constituted by law.

(2) Any person who contravenes or fails to comply with any provision of subsection (1) of this Section shall be guilty of an offence and shall be liable to a fine of not more than \$10,000.

PART VIII – INSPECTIONS AND NOTICES*Offences in relation to investigations*

45. A person who-

- (a) obstructs an Inspector in the exercise of his or her powers under this or any other Act or induces or attempts to induce a person to do so;
- (b) conceals the location or existence of a person or any plant or substance from an Inspector; or
- (c) in any other way, hinders, impedes or opposes an Inspector in the performance of the Inspector's functions or exercising of his or her powers under this or any other Act, shall be guilty of an offence against this Act and shall be liable to a fine of not more than \$ 10,000 in the case of a corporation or \$5,000 in any other case.

Inspector may issue improvement notice

46.—(1) Where an Inspector is of the opinion that a person-

- (a) is contravening this Act; or

- (b) has contravened this Act 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 the matters or activities giving rise to his or her opinion that the contravention will be repeated.

(2) An improvement notice shall-

- (a) state that the Inspector is of the opinion that the person-
 - (i) is contravening this Act; or
 - (ii) has contravened this Act in circumstances that make it likely that the contravention will continue or be repeated;
- (b) state the reasons for that opinion;
- (c) specify the provision of the Act in respect of which that opinion is held; and
- (d) specify the day (being a day later than 7 days after the day on which the notice is issued) before which the person is required to remedy the contravention or the matters or activities giving rise to his or her opinion that the contravention will be repeated.

(3) A person-

- (a) to whom an improvement notice is issued and in relation to which an appeal has not been made under Section 51 of this Act, and
- (b) who contravenes or fails to comply with it,

shall be guilty of an offence against this Act and shall be liable to a fine of not more than \$10,000 in the case of a corporation or \$5,000 in any other case.

Inspector may issue prohibition notice

47.—(1) Where an Inspector is of the opinion that at a workplace there is occurring or may occur an act which involves or will involve an immediate threat or risk to the health or safety of a person, the Inspector may issue to the person who has or he or she reasonably believes has control over the act or the activity in which the act may occur a prohibition notice prohibiting the continuation of the act or the carrying out of the activity until the Inspector certifies in writing that the immediate threat or risk has been removed or, in his or her opinion, the act will not occur.

(2) A prohibition notice shall-

- (a) state that the Inspector is of the opinion that in the workplace there is occurring or may occur an act which involves or will involve an immediate threat or risk to the health or safety of a person;
- (b) state the reasons for that opinion;
- (c) specify the act which, in the Inspector's opinion, involves or will involve the risk and the matters which give or will give rise to the risk; and
- (d) where in the Inspector's opinion the act involves or will involve a contravention or likely contravention of this Act, specify the relevant provision and state the reasons for that opinion.

(3) A person-

- (a) to whom a prohibition notice is issued and in relation to which an appeal has not been made under Section 51 of this Act; and
- (b) who contravenes or fails to comply with it,

shall be guilty of an offence against this Act and shall be liable to a fine of not more than \$20,000 in the case of a corporation or \$10,000 in any other case.

(4) Where an appeal has been made under Section 51 of the Act, against a prohibition notice, the Inspector shall not certify under subsection (1) of this Section until after the appeal is withdrawn or decided.

(5) Where an Inspector issues a prohibition notice in respect of an act relating to the use of, any plant at a workplace, the Inspector may place a mark on the plant, or any part of the plant, to indicate that the plant, or the part so marked, is not to be used until the Inspector certifies, under subsection (1) of this Section, in respect of the act in respect of which the prohibition notice was issued.

(6) A person who-

- (a) uses any plant, or a part of any plant, on which a mark has been placed; or
- (b) without the permission of the Inspector, removes, obliterates or otherwise interferes with a mark placed on any plant, or a part of any plant, under subsection (5) of this Section,

shall be guilty of an offence against this Act and shall be liable to a fine of not more than \$20,000 in the case of a corporation or \$10,000 in any other case.

Inspector may issue penalty notice

48.—(1) An Inspector may serve a penalty notice on a person if it appears to the Inspector that the person has committed an offence under this Act (or the regulations under this Act) or a provision of the associated health and safety legislation, being an offence prescribed by the regulations.

(2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter dealt with by a court, the person may pay, within the time and to the person specified in the notice, the amount of penalty prescribed by the regulations for the offence if dealt with under this Section.

(3) A penalty notice may be served personally or by post.

(4) If the amount of the penalty prescribed for an alleged offence is paid under this Section, no person is liable to any further proceedings for the alleged offence.

(5) Payment under this Section is not to be regarded as an admission of liability for the purpose of, nor in any way as affecting or prejudicing, any civil claim, action or proceedings arising out of the same occurrence.

(6) The regulations may:

- (a) prescribe an offence for the purposes of this Section by specifying the offence or by referring to the provision creating the offence; and
- (b) prescribe the amount of penalty payable for the offence if dealt with under this Section; and
- (c) prescribe different amounts of penalties for different offences or classes of offences.

(7) The amount of a penalty prescribed under this Section for an offence shall not exceed the maximum amount of penalty which could be imposed for the offence by a court.

(8) This Section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings which may be taken in respect of offences.

Issuing of notices

49. For the purposes of Sections 46, 47 and 48 of this Act, a notice under those Sections may be issued to a person by-

- (a) delivering it personally to the person;

- (b) leaving it at the person's usual or last known place of residence or business with some other person, apparently resident or employed there and who is apparently in charge or in a position of authority; or
- (c) posting it in a registered letter addressed to the person at the person's usual ,or last known place of residence or business.

Notices may include directions

50.—(1) An Inspector may include in an improvement notice or a prohibition notice or a penalty notice directions as to the measures to be taken to remedy the matters to which the notice relates.

(2) A direction under subsection (1) of this Section may-

- (a) refer to an approved code of practice; and
- (b) offer the person to whom it is issued a choice of ways in which to remedy the matters to which the notice relates.

Appeal against the notices

51.—(1) A person to whom an improvement notice or a prohibition notice is issued or, where that person is a worker, that person's employer, may, within seven days after the notice is issued or such further time as (lie Court allows, appeal in writing to the Court against the notice.

(2) Pending the decision by the Court on an appeal under subsection (1) of this Section, the operation of the notice shall-

- (a) in the case of an improvement notice, be suspended; and
- (b) in the case of a prohibition notice, continue unless the Board decides otherwise.

(3) Where-

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

that person is guilty of an offence and shall be liable to the penalty applying in the case of an offence against Section 46 or 47 of this Act, as the case may be.

PART IX-ASSESSMENT AND CONTROL OF CHEMICALS

Powers to prohibit or restrict a chemical

- 52.**—(1) The meaning of the term "chemical" may be prescribed by regulation.
- (2) The Minister may, on receiving a recommendation from the Chief Health and Safety Inspector, prohibit or restrict the import, export, manufacture, use or disposal of a chemical or pesticide.
- (3) The Minister may, on receiving a recommendation from the Chief Health and Safety Inspector, publish in the *Gazette* a notice listing certain chemicals, together with any prohibitions or restrictions on their import, export, manufacture, use or disposal.
- (4) Failure to comply with a notice issued under this Section shall be a failure to comply with this Section of the Act.
- (5) Any person who fails to comply with any of the Minister's prohibitions or restrictions under subsection (3) of this Section shall be guilty of an offence and shall be liable to a fine of not more than \$100,000.

Notification and assessment of new chemicals

- 53.**—(1) The Chief Health and Safety Inspector may make arrangements, prescribed by regulations, to establish a Fiji Chemical Inventory.
- (2) The Minister may, decide that those importing or manufacturing or supplying a chemical which is not listed on the Inventory, must notify and provide information to be prescribed, on the health, safety or environmental effects of chemicals not listed on the Inventory to the Chief inspector.
- (3) An application under subsection (2) of this Section shall be accompanied by payment of the prescribed fee.
- (4) The Chief Health and Safety Inspector shall make arrangements for the inventory to be opened for inspection by the public.

Declaration of a chemical for priority assessment

- 54.**—(1) Where the Chief Health and Safety Inspector has reasonable grounds for believing that the manufacture, handling, storage, use or disposal of an industrial chemical gives, or may give rise to a risk of adverse health effects or adverse environmental effects, the Chief Health and Safety Inspector may recommend to the Minister that the chemical be declared a priority existing chemical.
- (2) Where the Chief Health and Safety Inspector makes a recommendation under subsection (1) of this Section about a chemical, the Minister may, by notice in the *Gazette*, declare that chemical to be a priority existing chemical.

(3) A declaration under subsection (2) of this Section may be expressed to apply in relation to a chemical, either generally or only when the chemical is:

- (a) used for a specified purpose or purposes; or
- (b) manufactured, handled, stored or used in a specified geographical area or in specified circumstances.

(4) For the purposes of assessing a priority existing chemical, the Chief Health and Safety Inspector may, by notice in the *Gazette*, require a person (in this Section called the "notifier") to whom the notice applies, to provide information for assessment about the chemical in accordance with the regulations.

(5) The Chief Health and Safety Inspector shall maintain a list of priority existing chemicals and list of chemicals that have been priority existing chemicals, and may publish the lists in the *Gazette* at least once a year.

(6) A notifier shall not, without reasonable excuse, refuse or fail to comply with the notice.

(7) A notifier who contravenes or fails to comply with the provision of subsection (4) of this Section shall be guilty of an offence and shall be liable to a fine of not more than \$50,000.

Assessment reports for chemicals

55.—(1) The matters addressed in the assessment report may be prescribed by regulations.

(2) Assessment reports published under any nominated foreign assessment scheme, prescribed by regulation, will be accepted assessment reports for the purposes under this Act.

(3) Assessment reports published under a nominated foreign scheme may be varied by the Chief Health and Safety Inspector to ensure that the report and the recommendations in the report properly reflect local conditions, and any recommended control measures are relevant and practicable.

Publication of assessment report

56.—(1) An assessment report for a chemical shall be published no later than 18 months after it has been declared for priority assessment. The Minister may extend this time by 6 months on special request by the Chief Health and Safety Inspector.

(2) The Chief Health and Safety Inspector shall make arrangements to publish Assessment Reports, and shall provide notice in the *Gazette* that a report has been published.

(3) A chemical shall no longer be a priority chemical once notice of its publication has been made in the *Gazette*.

PART X-ASSOCIATED HEALTH AND SAFETY LEGISLATION

Saving

57. Subject to this Part, the provisions of the associated health and safety legislation shall be observed in addition to the provisions of this Act, until specifically repealed under Section 61 of this Act.

This Act to prevail

58.—(1) Except as provided by subsection (2) of this Section, where any provision of the associated health and safety legislation is inconsistent with a provision of this Act or the regulations, the provision of this Act or the regulations shall prevail.

(2) A person shall not be guilty of an offence under Part II in respect of any act or omission which is expressly required or permitted to be done or omitted by or under the associated health and safety legislation.

Double jeopardy

59. Where an act or omission constitutes an offence-

- (a) under this Act or the regulations; and
- (b) under the associated health and safety legislation, the offender shall not be liable to be punished twice in respect of the offence.

Associated health and safety legislation

60. The provisions of the Factories Act; Petroleum Act; Pesticides Act and ionising Radiations Act and the regulations and orders made under them shall, for the purpose of this Act, be associated health and safety legislation.

Repeal

61. All the associated health and safety legislation under Section 60 of this Act shall be progressively replaced with appropriate regulations, standards and codes of practices under this Act, within five years from the date of commencement of this Act.

PART XI-REGULATIONS AND CODES OF PRACTICE

Regulations

62.—(1) The Minister, on the recommendation of the Permanent Secretary in consultation with the Board, may make regulations, not inconsistent with this Act, prescribing matters-

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting the generality of subsection (1) of this Section, regulations may be made for or with respect to:

- (a) regulating or prohibiting-
 - (i) the manufacture, supply or use of any plant;
 - (ii) the manufacture, supply, use, storage or transport of any substance; or
 - (iii) the carrying on of any process or the carrying out of any operation;
- (b) the safety and health of workers engaged in particular industries or other workplaces;
- (c) the certification of operators in prescribed plant or machinery;
- (d) the registration of a workplace or any plant or substance;
- (e) the licensing of a person carrying out processes or activities under the Act;
- (f) conditions applying to registrations and licences (including conditions by prescribed persons);
- (g) the service of notices under this Act;
- (h) the powers of the Inspectors in relation to investigations at workplaces;
- (i) procedures for the appointment of health and safety representatives;
- (j) composition, election or appointment of persons to health and safety committees;
- (k) labelling requirements for chemicals and Material Safety Data Sheets;
- (l) notification and record keeping of accidents and other matters;

- (m) forms for the purposes of this Act;
- (n) prescribing of fines, not exceeding \$20,000, for a breach of the regulations;
- (o) prescribing matters to be dealt with penalty notices; or
- (p) any matter relating to the progressive replacement of any of the associated health and safety legislation under Section 61 of this Act.

(3) The regulations may incorporate or adopt by reference the provisions of any document, standard, rule, specification or method formulated, issued, prescribed or published by any authority or body whether-

- (a) wholly or partly, or as amended by the regulations;
- (b) as formulated, issued, prescribed or published at the time the regulations are made or at any time before then; or
- (c) as amended after the making of the regulations, but only where the Minister has published in the *Gazette* a notice that the particular amendment is to be incorporated in the regulations.

(4) The regulations may provide that a prescribed employer or a member of a prescribed class of employers shall-

- (a) monitor the health of his or her workers;
- (b) keep information and records relating to the health and safety of his or her workers;
- (c) employ or engage a person who, being suitably qualified in relation to occupational health and safety, is able to provide advice to the employer in relation to the health and safety of the employer's workers;
- (d) monitor conditions likely to affect the health and safety of his or her workers at a workplace under his or her control and management;

or any combination of those things, and the employer shall, accordingly, do that thing or those things.

(5) A provision of a regulation may-

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;

- (b) apply differently according to different factors of a specified kind;
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body;
- (d) exempt any person or class of persons, either absolutely or subject to conditions, from any provision of the regulations;

or may do any combination of those things.

Codes of practice

63.—(1) For the purpose of providing practical guidance on any matter relating to this Act, the Minister shall, on approval of the Board, by notice in the *Gazette*, approve a national code of practice.

(2) A code of practice may consist of a code, standard, rule, specification or provision relating to matters in this Act formulated, prepared or recommended by the Board in liaison with the Inspectorate, and may apply, incorporate or refer to a document formulated or published by a 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) A notice under subsection (1) of this Section shall indicate where a copy of the approved code of practice to which it relates, and all documents incorporated or referred to in the code, may be inspected by members of the public without charge, and the times during which it may be inspected, and the Minister shall make the code and those documents available for that purpose accordingly.

(4) Any codes of practice shall take into account any current and relevant international or overseas codes of practice in its development.

Use of codes of practice in proceedings

64. Where in proceedings under or for an offence against this Act it is alleged that a person contravened or failed to comply with a provision of this Act in relation to which an approved code of practice was in force at the time of the alleged contravention or failure

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

- (i) a provision of the approved code of practice is relevant to that matter; and
- (ii) the person failed at a material time to observe that provision of the approved code of practice,

that matter shall be taken as proved unless the Court is satisfied that in respect of that matter the person complied with that provision of this Act otherwise than by way of observance of that provision of the approved code of practice.

PART XII—OFFENCES, PENALTIES AND LEGAL PROCEEDINGS

Offences

65. Any person who contravenes or fails to comply with any provision of this Act or the regulations shall be guilty of an offence against this Act.

General penalties

66.—(1) Any person who is guilty of an offence against this Act for which no penalty is specifically provided shall be liable to a fine of not more than-

- (a) where that person is a corporation, \$15,000; or
- (b) in any other case, \$1,000.

(2) In relation to a contravention which in fact was likely to cause the death of, or bodily injury to, any person, the following maximum fine shall have effect not exceeding-

- (a) \$100,000 in the case of a corporation; or
- (b) \$10,000 in any other case.

(3) The whole or any part of the fine may be applied for the benefit of the injured or deceased person or his or her family or otherwise, as the court may determine

Offences by corporations

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

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

(3) In subsection (1) of this Section, "officer", in relation to a corporation means-

- (a) a director, secretary or executive officer of the corporation;
- (b) any person in accordance with whose directions or instructions the directors of the corporation are accustomed to act; or
- (c) a person concerned in the management of the corporation.

Protection against civil and criminal proceedings

68. No action or proceeding, civil or criminal, shall lie or be continued against any Inspector or any other body established by or under this Act, for anything done or omitted in good faith in the exercise or purported exercise of a function of an Inspector or body under this Act.

Authority to prosecute

69. Proceedings for an offence against this Act may be instituted only with the written consent of the Chief Health and Safety Inspector.

Time for instituting proceedings for offences

70. Notwithstanding anything in any other Act, proceedings for an offence against this Act may be instituted within the period of three years after the act or omission alleged to constitute the offence.

Aiding and abetting

71. A person who aids, abets, counsels or procures, or by act or omission is in anyway directly or indirectly knowingly concerned in or a party to, the commission of an offence against this Act shall be deemed to have committed that offence and is punishable accordingly.

Repetition of certain offences - additional penalty

72.—(1) This Section applies to proceedings for a second or subsequent offence against this Act which comprises a repetition of the act or omission which constituted a previous offence.

(2) If the defendant in proceedings to which this Section applies is a natural person, a sentence of imprisonment for a period not exceeding two years may be imposed in addition to or in substitution for any other fine which may be imposed under this Act.

(3) This Section applies even if the previous offence concerned was committed before the commencement of this Section.

Passed by the House of Representatives this fifteenth day of May, in the year of our Lord one thousand, nine hundred and ninety-six.

Passed by the Senate this seventh day of June, in the year of our Lord one thousand, nine hundred and ninety-six.