

WITHOUT PREJUDICE

Monday, April 07, 2003

The following act sets out the Common Law in relation to the actions of certain persons in relation to the decision making process.

Queensland

WORKPLACE HEALTH AND SAFETY ACT 1995

**Reprinted as in force on 2 February 1998
(includes amendments up to Act No. 58 of 1997)**

Reprint No. 3

This reprint is prepared by
the Office of the Queensland Parliamentary Counsel
Warning—This reprint is not an authorised copy

:Comments indented and in Italic:

Extracts from the Workplace Health and Safety Act:

Act binds all persons

4. 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.

: Any person making a decision is bound by the Act

What does this Act apply to?

5. This Act applies to all workplaces, workplace activities and specified high risk plant.

: The Act in the definitions sets out place as: “place” includes land, a building, another structure or installation, a road, a vehicle, a tent or marquee, or any other place (even if the place is in a natural or undeveloped state) whether the place is on or under the water or on the bed of any waters.

Who does this Act apply to?

6. 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.

:Making a decision to construct a Building, a Structure or a thing will have an affect on not only the persons involved in the constructing and operating , as a result of that decision, but also on the people where that construction, operation, or the impacts of the construction, or operation has the potential to impact on their lives, the value of their assets or could be of detriment to their wellbeing.

Objective of Act

7.(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.

:If the impact or detriment to a person is, as a result of a workplace activity, but the affected persons location is outside the workplace where the activity took place, because the activity originated in a workplace, the object of the Act applies Quote: " The objective of this Act is to prevent a person's death, injury or illness being caused by a workplace". Unquote.

Discharge of obligations

24.(1) A person on whom a workplace health and safety obligation is imposed must discharge the obligation.

Maximum penalty—

(a) if the breach caused death or grievous bodily harm—800 penalty units or 2 years imprisonment; or

(b) if the breach involved exposure to a substance that is likely to cause death or grievous bodily harm—500 penalty units or 1 year imprisonment; or

(c) if the breach caused bodily harm—500 penalty units or 1 year imprisonment; or

s 24A 21

Workplace Health and Safety Act 1995

s 25

(d) otherwise—400 penalty units or 6 months imprisonment.

(2) Subsection (1) applies despite Criminal Code, sections 23 and 24. 4

:Self explanatory Quote " A person on whom a workplace health and safety obligation is imposed must discharge the obligation" Unquote.

“public administration industry” means any of the following—

(a) the Queensland Fire Service;

(b) the Queensland Police Service;

(c) judicial bodies;

(d) political parties;

(e) state or local governments.

: The Act clearly binds state or local governments

Responsibility for acts or omissions of representatives

166.(1) In this section—

“representative” means—

(a) of a corporation—an executive officer, employee or agent of the corporation; or

(b) of an individual—an employee or agent of the individual.

“state of mind” of a person includes—

(a) the person's knowledge, intention, opinion, belief or purpose; and

- (b) the person's reasons for the intention, opinion, belief or purpose.
- (2) Subsections (3) and (4) apply in a proceeding for an offence against this part.
- (3) If it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show—
 - (a) the act was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority; and
 - (b) the representative had the state of mind.
- (4) An act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.

: The term “representative” means— (a) of a corporation—an executive officer, employee or agent of the corporation

Executive officers must ensure corporation complies with Act

167.(1) The executive officers of a corporation must ensure that the corporation complies with this Act.

(2) If a corporation commits an offence against a provision of this Act, each of the corporation's executive officers also commits an offence, namely, the offence of failing to ensure that the corporation complies with the provision.

Maximum penalty for subsection (2)—the penalty for the contravention of the provision by an individual.

(3) Evidence that the corporation has been convicted of an offence against a provision of this Act is evidence that each of the executive officers committed the offence of failing to ensure that the corporation complies with the provision.

(4) However, it is a defence for an executive officer to prove—

- (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence—the officer exercised reasonable diligence to ensure the corporation complied with the provision; or
- (b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.

: This section clearly sets out that not only is each Executive officer responsible for their own action or in-action , they are also responsible for the action or in-action of any person associated with the corporation.

Quote section **166.(1)** “**representative**” means—

- (a) of a corporation—an executive officer, employee or agent of the corporation; or
- (b) of an individual—an employee or agent of the individual". Unquote.

False or misleading statements

171.(1) A person must not—

- (a) state anything to a board of inquiry, the chief executive or an inspector the person knows is false or misleading in a material

particular; or

(b) omit from a statement made to a board of inquiry, the chief executive or an inspector anything without which the statement is, to the person's knowledge, misleading in a material particular.

Maximum penalty—30 penalty units.

(2) It is enough for a complaint against a person for an offence against subsection (1) to state that the statement made was false or misleading to the person's knowledge.

False, misleading or incomplete documents

172.(1) A person must not give a board of inquiry, the chief executive or an inspector a document containing information the person knows is false, misleading or incomplete in a material particular.

Maximum penalty—30 penalty units.

(2) Subsection (1) does not apply to a person if the person, when giving the document—

(a) tells the board, chief executive or inspector, to the best of the person's ability, how it is false, misleading or incomplete; and

(b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

(3) Also, a person must not make an entry in any document required or permitted to be made or kept under this Act knowing the entry to be false, misleading or incomplete in a material particular.

Maximum penalty—30 penalty units.

(4) It is enough for a complaint against a person for an offence against subsection (1) or (3) to state that the document or entry made was false, misleading or incomplete to the person's knowledge.

: The same process is applicable for sections 171 and 172, as for the previous section.

SCHEDULE 3

DICTIONARY

section 8

“civil construction work” means work to—

(a) construct a road or highway or erect associated works; or

(b) construct a railway or erect associated works; or

(c) construct or erect a harbour or associated works; or

(d) construct or erect a water storage or supply system or associated works; or

(e) construct a sewerage or drainage system or associated works; or

(f) construct or erect an electricity or gas generation, transmission or distribution structure or associated works; or

(g) construct a park or recreation ground, including, for example, a golf course, playing field, racecourse or swimming pool or associated works; or

(h) erect a telecommunications structure or associated works; or

(i) construct production, storage and distribution facilities for heavy industry, refineries, pumping stations, or mines or associated works; or

(j) construct or structurally alter a bridge or associated works;

if the estimated final price of the work at practical completion is more

than \$40 000 or another amount prescribed by regulation.

Queensland

Workplace Health and Safety Act 1995

WORKPLACE HEALTH AND SAFETY REGULATION 1997

Reprinted as in force on 15 January 1999

(includes amendments up to SL No. 318 of 1998)

Reprint No. 1B

This reprint is prepared by
the Office of the Queensland Parliamentary Counsel
Warning—This reprint is not an authorised copy

SCHEDULE 3 DICTIONARY

“**place**” includes land, a building, another structure or installation, a road, a vehicle, a tent or marquee, or any other place (even if the place is in a natural or undeveloped state) whether the place is on or under the water or on the bed of any waters.

*: The Act covers land, a building, **another structure** or installation, a road, a vehicle, a tent or marquee, or any other plac.*

“**public administration industry**” means any of the following—

- (a) the Queensland Fire Service;
- (b) the Queensland Police Service;
- (c) judicial bodies;
- (d) political parties;
- (e) **state or local governments.**