

SAINT VINCENT AND THE GRENADINES
OCCUPATIONAL SAFETY AND HEALTH BILL 2016
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SAINT VINCENT AND THE GRENADINES

BILL FOR

**ACT NO. OF 2016
I ASSENT**

[]

Governor-General

AN ACT to provide for the safety, health and welfare of persons at work.

[]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly of Saint Vincent and the Grenadines and by the authority of the same, as follows:

PART I

PRELIMINARY

Short title

1. This Act may be cited as the Occupational Safety and Health Act 2016.

Commencement

2. This Act comes into operation on such day as the Governor General may appoint by Proclamation published in the *Gazette* and different days may be appointed for different provisions of this Act or for different purposes.

Interpretation

3. (1) In this Act –

“Advisory Council” means the Advisory Council on Occupational Safety and Health established under section 6;

“air contaminant” means airborne solid, liquid, fume or gaseous matter, radioactive fallout, odour, micro-organism or any combination of them, in such concentration or quantities as to impair the quality of the working environment or to expose persons to risks to their health;

“air-receiver” means –

(a) any vessel (other than a pipe or coil, or an accessory, fitting or part of a compressor) for containing compressed air and connected with an air compressing plant;

(b) any fixed vessel for containing compressed air or compressed exhaust gases and used for the purpose of starting an internal combustion engine;

(c) any fixed or portable vessel (not being part of a spraying pistol) used for the purpose of spraying by means of compressed air any paint, varnish, lacquer or similar material; or

any vessel in which liquid is stored and from which it is forced by compressed air;

“approved standard” means –

(i) a national standard that is declared or an international standard that is adopted by the Saint Vincent and the Grenadines Bureau of Standards under the Standards Act; or

(ii) an appropriate standard determined by the Chief Inspector;

“biological agent” means bacteria, viruses, fungi, rickettsiac, chlamydia and parasites;

“bodily injury” includes injury to physical and mental health;

“chemical” means a chemical element and compound, and a mixture thereof,

whether natural or synthetic;

“child” means a person under the age of sixteen;

“Chief Medical Officer” means the public officer holding, or acting in, the office of Chief Medical Officer;

“Chief Inspector” means the Chief Inspector appointed under section 10;

“committee” means a safety and health committee established for an industrial establishment under section 39;

“construction” includes –

(a) building, including excavation and the construction, structural alteration, renovation; repair maintenance (including cleaning and painting) and demolition of all types of building or structures;

(b) civil engineering, including excavation and the construction, structural alteration, repair, maintenance and demolition of, for example, airports, docks, harbours, inland waterways, dams, river and avalanche and sea defence works, roads and highways, railways, bridges, tunnels, viaducts and works related to the provision of services such as communications, drainage, sewerage, water and energy supplies; and

(c) the erection and dismantling of buildings and structures, as well as the manufacturing of prefabricated elements on the construction site;

“construction site” means any site at which any of the processes or operations described in the definition of the term “construction” are carried on;

“Court” means a Magistrates’ Court;

‘critical injury’ means an injury that –

(a) places life in jeopardy;

(b) produces unconsciousness;

(c) results in substantial loss of blood;

- (d) involves the fracture of a leg or arm, but not a finger or toe;
- (e) consists of burns to a major portion of the body; or
- (f) causes the loss of sight in an eye;

“critical substance” means a chemical physical agent or biological agent, or combination thereof prescribed as a critical substance to which the exposure of a employee is prohibited, regulated, restricted, limited or controlled;

“dangerous” means likely to create risk to safety or health or cause bodily injury;

“employee” means any person who has entered into or works under a contract of service or apprenticeship with an employer to do any skilled or unskilled work for hire or reward, whether the contract is expressed or implied, oral or in writing or partly oral or partly in writing, and includes a public officer;

“employer” means any person who employs persons for the purpose of carrying out any trade, business, profession, office, vocation or apprenticeship;

“existing industrial establishment” means an industrial establishment in operation on the day this Act commences;

“factory” means premises in which, or within the curtilage or precincts of which, persons are employed, by way of trade, or intended trade, or for purposes of gain, in or incidental to any process, including –the making, demolishing, altering, repairing, warehousing, ornamenting, furnishing, distributing, cleaning, washing, breaking up or adapting for sale, of any article or product, or the filling of containers;

- (a) the slaughtering of animals or poultry;
- (b) the production of cinematograph films or other audio-visual material;
- (c) the storing of gas;
- (d) the transforming or converting materials or chemicals;
- (e) the supplying and maintaining of services in connection with water and sewerage; and
- (f) the testing or analyzing of any substance;

and premises shall not be excluded from this definition by reason only that they are open air premises;

“Fire Brigade” means the Fire Brigade established by the Fire Brigades Act;

“fugitive emissions” means any gas, vapour or liquid which escapes unintentionally from any part of a plant or machinery;

“hazardous biological agent” means any biological agent at an excessive level for which relevant information exists to indicate that the biological level is hazardous;

“hazardous substances” means a substance or mixture of substances which by virtue of chemical, physical or toxicological properties either singly or in combination, constitutes a hazard;

“Hearing Officer” means the Hearing Officer appointed under section 18;

“homework” means the doing of any work in the manufacture, preparation, improvement, repair, alteration, assembly or completion of any article or any part thereof by an employee for wages in his own home or other premises occupied primarily as living accommodation;

“industrial establishment” means a factory, shop, office or workplace and any building or other structure or premises appertaining thereto but does not include premises occupied for residential purposes only;

“inspector” means any person who is appointed as an inspector under section 10;

“Labour Commissioner” means the public officer holding, or acting in, the office of Labour Commissioner;

“major hazard installation” means an installation which produces, processes, handles, uses, disposes of or stores, either permanently or temporarily, one or more substances in quantities which exceed the threshold quantity as prescribed;

“machinery” means a part or assemblage of a part, fixed or movable, by which motion, force or telecommunication is transmitted;

“medical inspector” means any registered medical practitioner who is designated as a medical inspector under section 10;

“mine” means –

- (a) any surface or underground site where the following activities, in particular, take place –
 - i. the exploration of mineral resources that involves the mechanical disturbance of the ground;
 - ii. the extraction of mineral resources;
 - iii. the preparation, including crushing, grinding, concentration or washing of the extracted material;
- (b) any machinery, equipment, appliance, plant, building, or civil engineering structure used in conjunction with any activity referred to in paragraph (a);

“Minister” means the Minister to whom responsibility for occupational safety and health is assigned;

“new industrial establishment” means any industrial establishment which first commences to operate at sometime after the day this Act commences;

“occupational disease” means a disease listed in the Schedule;

“occupier” in relation to an industrial establishment means the person who has ultimate control over the affairs of an industrial establishment;

“owner” in relation to an industrial establishment means the person for the time being receiving the rack-rent of the premises whether used for an industrial establishment whether on his own account or as agent, trustee, receiver, mortgagee in possession for any other person, or who would so receive the rent if the premises were let at a rack-rent;

“parent” includes a guardian or person having the legal custody of, or control over, a child or young person;

“physical agent” includes electromagnetic radiation, ionising radiation, noise, vibration, heat, cold, humidity and pressure;

“plant” includes equipment and appliance;

“premises” includes any place, and in particular –

- (a) any vehicle, vessel, aircraft or hovercraft;
- (b) any subterranean installation or installation on land, including the foreshore and other land intermittently covered by water;
- (c) any offshore installation and any other installation, whether floating or resting on the seabed or the subsoil thereof or resting on other land covered with water or the subsoil thereof; and
- (d) any tend or movable structure;

“prime mover” means every engine, motor or other appliance which provides mechanical energy derived from steam, water, wind, electricity, the combustion of fuel or other source;

“process” means treatment applied to a substance or material to produce the desired result;

“public emergency” means the emergency declared by proclamation by the Governor-General under section 17 of the Constitution;

“sanitary conveniences” includes urinals, water-closets or closets, privies and any similar conveniences;

“safety and health representative” means a safety and health representative selected under section 39;

“ship”, “vessel” and “harbour” have the same meanings as are respectively assigned to them in any law relating to shipping;

“shop” means a building, booth or stall or a part of such building, booth or stall where goods are handled, exposed or offered for sale or where services are offered for sale;

“State” means the State of Saint Vincent and the Grenadines;

“supervisor” means a person who has charge of a work place or authority over an employee;

“technical examiner” means a person who is designated as a technical examiner under section 15;

“threshold quantity” means for a given hazardous substance or category of substances that quantity, as prescribed, which if exceeded identifies a major hazard installation;

“toxic substance” means any disinfectant, and any other substance known to be poisonous, corrosive, irritating, sensitising or harmful to man or animal that is used in agriculture, the arts, commerce or industry, or for any domestic or other purpose but does not include an antiseptic, drug or preservative;

“workplace” means a place or premises where an employee needs to be or go by reason of his or her work and which is under the direct or indirect control of the employer;

work-related disease” means a condition that results from exposure of an employee in a industrial establishment to a chemical, physical agent, or biological agent to the extent that the normal physiological mechanisms of such employee is affected and his health impaired thereby;

“young person” means a person who has ceased to be a child and has not attained the age of eighteen years.

(2) Premises shall not be excluded from the definition of an industrial establishment by reason only that they are open air premises.

(3) Any premises belonging to or occupied by the Crown or agent of the Crown shall not be excluded from the definition of an industrial establishment.

(4) A person who works in an industrial establishment whether for wages or not, either in a process or in cleaning or oiling any part of the machinery or plant, or in any other kind of work whatsoever incidental to or connected with the process, or connected with the article made or otherwise the subject of the process therein, shall, save as is otherwise provided by this Act, be deemed to be employed therein for the purposes of this Act.

(5) A young person, who works in an industrial establishment, whether

for wages or not, in collecting, carrying or delivering goods, carrying messages or running errands, shall be deemed to be employed in the industrial establishment for the purposes of this Act.

(6) For the purposes of this Act and the regulations, a ship being manufactured or under repair shall be deemed to be a construction site.

(7) An owner does not become an employer at a construction site by virtue only of the fact that the owner has engaged an architect, professional engineer or other person solely to oversee quality control at a construction site.

(8) Except where otherwise expressly provided, the provisions of this Act shall be in addition to and not in substitution for or in diminution of the provisions of any other written law.

(9) Unless the context otherwise requires, a reference to regulations in this Act means regulations made under this Act.

Application of Act

4. (1) Except as in this Act otherwise expressly provided, this Act applies only to industrial establishments.

(2) This Act applies to an industrial establishment belonging to or occupied by the Crown but in the case of a public emergency, the Minister may, by order for the duration of the period specified in the order, exempt from this Act any industrial establishment –

(a) belonging to or occupied by the Crown;

(b) in which work is being carried out on behalf of the Crown: or

(c) whose activities are vital to the national interest.

(3) This Act does not apply to –

(a) non-commercial work performed by the owner or occupant of a private residence in or about a private residence or the lands and appurtenances used in connection with the work; or

(b) domestic employees.

(4) Notwithstanding anything in this section, the Minister may by order extend the provisions of this Act to such class or classes of employees and their employers as are specified in the order and, from the date set by the order, this Act applies to those employees and employers as if they had been included in this Act.

Act binds Crown

5. This Act binds the Crown.

More favourable provisions

6. Where any of the rights of an employee established by any other Act, collective agreement, contract of employment, custom or practice are more favourable than this Act requires, the provisions so established prevail over this Act.

PART II

REGISTRATION OF INDUSTRIAL ESTABLISHMENTS AND

Registration of industrial establishments

7. (1) A person who is the owner or occupier of an industrial establishment shall –

- (a) in relation to an existing industrial establishment, register the industrial establishment within thirty days after the commencement of this Act;
- (b) in relation to a new industrial establishment, register the industrial establishment within thirty days after the industrial establishment commences to operate.

(2) Every application for registration of an industrial establishment shall contain the following particulars –

- (a) the names and addresses of the owner and occupier of the industrial establishment;
- (b) the address of the location of the industrial establishment;
- (c) the nature and object of the process carried out in the industrial

- establishment;
- (d) the number of employees employed in the industrial establishment;
 - (e) the hazardous chemical and hazardous physical agents present in the industrial establishment;
 - (f) whether the industrial establishment is a major hazard installation.
- (3) Where any change takes place in any of the particulars registered under subsection (2), the owner or occupier of the industrial establishment to which the particulars relate shall, within thirty days after the date upon which the change takes place, apply to the Chief Inspector for the registration of the change, and the Chief Inspector shall amend the register of industrial establishments accordingly and issue to the applicant a verification of registration of the change.
- (4) The Chief Inspector may take steps he considers necessary to ascertain whether –
- (a) an industrial establishment registered under this Act is being operated as an industrial establishment; or
 - (b) any change has taken place in the particulars registered under this section in respect of any industrial establishment.

PART III

ADMINISTRATION

Establishment and functions of Advisory Council

8. (1) There is established an Advisory Council to be known as the Advisory Council on Occupational Safety and Health consisting of –
- (a) the Labour Commissioner who shall be the Chairman;
 - (b) the Chief Inspector; and
 - (c) not less than twelve nor more than twenty other members appointed by the Minister from among persons nominated for appointment by bodies or persons representative of the concerns referred to in subsection (2).
- (2) The members of the Advisory Council referred to in subsection (1)

(c) shall be appointed for such term as the Minister determines and shall be representative of management, labour, technical or professional bodies or persons which or who are concerned and have knowledge of occupational safety, welfare and health.

(3) The Minister shall appoint a vice-chairman of the Advisory Council from among the members appointed.

(4) The Minister may fill any vacancy that occurs in the membership of the Advisory Council.

(5) The remuneration and expenses of the members of the Advisory Council shall be determined by the Minister and shall be paid out of the moneys appropriated for that purpose by the House of Assembly.

(6) The Advisory Council, with the approval of the Minister, may make rules and pass resolutions governing its procedure, including the calling of meetings, the establishment of a quorum, and the conduct of meetings.

(7) **The functions of the Advisory Council are –**

(a) to advise the Minister on matters relating to occupational safety and health or arising out of the operation of this Act which may be brought to its attention or be referred to it, including the formulation of a national policy on occupational safety and health;

(b) to make recommendations to the Minister relating to programmes of the Ministry in occupational safety and health including enforcement and the implementation of a national policy on occupational safety and health; and

(c) to promote public awareness of occupational safety and health;

(8) The Advisory Council shall file with the Minister not later than the 1st day of June in each year an annual report upon the affairs of the Advisory Council for the previous year.

(9) The Minister shall submit the report to the House of Assembly if it is in session or, if not, at the next ensuing session.

Committees

9. (1) The Advisory Council may establish committees to assist it in the

performance of its functions and may appoint such persons whether or not they are members of the Advisory Council as it may think fit to be members of the committees, except that the Chairman of every committee shall be a member of the Council.

(2) A person appointed under subsection (1) who is not a member of the Advisory Council [other than/including a public officer] may be paid such remuneration and expenses determined by the Minister.

Appointment of Chief Inspector and others

10. (1) There shall be appointed, in the manner authorised by law, for the purposes of this Act, a Chief Inspector and such number of inspectors or other officers as may from time to time be required for the administration and enforcement of this Act and the regulations.

(2) The Chief Inspector shall –

(a) administer and enforce this Act and the regulations; and

(b) control and supervise inspectors and other officers appointed to assist him in the administration and enforcement of this Act and the regulations.

(2) The Minister shall issue a photograph identification card, bearing his signature, to every inspector.

(3) Every inspector, in the exercise of his powers and duties, shall produce his photograph identification card upon request.

Powers of the Chief Inspector and of an inspector

11. (1) For the purposes of this Act, the Chief Inspector and every inspector has the power to do all or any of the following –

(a) to enter, inspect, take photographs of and examine, at all reasonable times, either alone or together with such other person possessing technical or special knowledge as the Chief Inspector may authorise in writing, any place which he has cause to believe is an industrial establishment;

(b) to request the presence and assistance of a police officer if he has

reasonable cause to believe that there may be serious obstruction in the execution of his duty;

- (c) whenever he has reasonable cause to believe that explosive or highly inflammable materials are stored or used in any building in which an industrial establishment forms part, to enter, inspect, take photographs of and examine, **at all reasonable times**, any part of the building;
- (d) to enter a ship or vessel in a dock or harbour or at a wharf, and inspect, take photographs of and examine the ship or vessel as he may think fit;
- (e) to require the production of the registers, certificates, notices and documents kept under this Act, and to inspect, take photographs of, examine, and copy any of them;
- (f) upon giving a receipt, to remove any register, certificate, notice and document kept under this Act for the purpose of making copies from, or extracts of them, and upon making the copies or extracts, to promptly return the same to the person who produced or furnished them;
- (g) to examine, inquire or test as may be necessary to ascertain whether, in respect of an industrial establishment or the persons employed in the industrial establishment, or in respect of any prescribed occupation, the provisions of this Act and of the enactments relating to public health are being complied with;
- (h) to conduct or take tests without unduly disturbing the industrial establishment, of any equipment, machine, device, article, material, chemical, physical agent, or biological agent in or about an industrial establishment and for such purposes, to take and carry away any sample as may be necessary subject to the employer being notified of the sample taken and carried away;
- (i) to request in writing an employer to cause any tests described in paragraph (g) to be conducted or taken, at the expense of the employer, by a person possessing the special expert or professional knowledge or qualifications as specified by the inspector and to provide, at the expense of the employer, a report or assessment by that person;

- (j) in any inspection, examination, inquiry or test, to be accompanied and assisted by or take with him any person having special, expert or professional knowledge of any matter, take photographs, and take with him and use any equipment or material required for such purpose;
- (k) to require any person whom he finds in an industrial establishment to give such information [as it is in his power to give] as to the identity of the owner, occupier or employer;
- (l) to require a person –
- (i) in an industrial establishment; or
 - (ii) whom he has reasonable cause to believe to be, or to have been within the preceding two months, employed in an industrial establishment [or in respect of a prescribe occupation],
- to answer questions with respect to matters under this Act and to sign a declaration of the truth of such answers, except that no one shall be required under this paragraph to give any answers which may tend to incriminate himself;
- (m) to request that any equipment, machine, device, article or process be operated or set in motion or that a system or procedure be carried out that may be relevant to an examination, inquiry or test;
- (n) to request in writing an employer to have equipment, machinery or device tested, at the expense of the employer, by a professional engineer and to provide, at the expense of the employer, a report bearing the seal and the signature of the professional engineer stating that the equipment, machinery or device is not likely to endanger a employee;
- (o) to request in writing that any equipment, machinery or devise not be used pending **any test requested under this section**;
- (p) to request in writing an owner or employer to provide, at the expense of the owner or employer, a report bearing the seal and signature of a professional engineer stating –
- i. **the load limits of a floor, roof, part of a building, structure or**

temporary work platforms;

- ii. that a floor, roof, part of a building, structure or temporary work is capable of supporting or withstanding the loads being applied to it. or likely to be applied to it;
 - iii. that a floor, roof, part of a building, structure or temporary work platform is capable of supporting or withstanding all loads to which it may be subjected without causing the materials therein to be stressed beyond the allowable unit stresses established under any building code or law;
- (q) to request in writing an owner of a mine [or part thereof] to provide, at the owner's expense, a report in writing bearing the seal and the signature of a professional engineer stating that the ground stability of the mine, the mining methods and the support or rock reinforcement used in the mine [or part thereof] is such that a employee is not likely to be endangered;
- (r) to require in writing, within such time as is specified, an employer, manufacturer, producer, importer, distributor or supplier to produce records or information, or to provide, at the expense of such person, a report or evaluation made by a person or organisation having special, expert or professional knowledge or qualifications as are specified by the inspector of a process, chemical or physical or biological agent or a combination of such chemical and agents present, used or intended for use in an industrial establishment and the manner of use, including –
- i. the ingredients and their common or generic name or names;
 - ii. the composition and property;
 - iii. the toxicological effect;
 - iv. the effect of exposure whether by contact, inhalation or ingestion;
 - v. the protective measures used or to be used;
 - vi. the emergency measures used or to be used to deal with exposure; and

- vii. the effect of the use, transport and disposal;
 - (s) to request the production of any material concerning the content, frequency and manner of instruction of any training programme and inspect, examine and copy the material and to attend the programme;
 - (t) in the case of a medical inspector, to carry out such medical examinations as may be necessary for the purposes of his duties under this Act;
 - (u) to exercise such other power or duties conferred by this Act or any other law; and
 - (v) to exercise such other powers, duties and functions as may be necessary to carry this Act into full effect.
- (2) The occupier of every industrial establishment, his agents and employees shall furnish the means required by an inspector as necessary for the entry, inspection, examination, inquiry, the taking of samples or otherwise for the exercise of his powers, duties and functions under this Act in relation to that industrial establishment.

Appointment of medical inspectors

12. (1) The Minister may, by notice published in the *Gazette*, designate a sufficient number of registered medical practitioners to be medical inspectors for any of the purposes of this Act.

(2) No medical practitioner who is the occupier of an industrial establishment or is directly or indirectly interested in the industrial establishment, or in any process or business carried in the establishment, or in a patent connected with the establishment shall act as medical inspector for the industrial establishment.

(3) Notwithstanding subsection (2), the Minister may authorise a registered medical practitioner who is employed by the occupier of an industrial establishment in connection with the medical supervision of persons employed in the industrial establishment but is not otherwise interested in the industrial establishment, to act as medical inspector for the industrial establishment for the purpose of examining and certifying the fitness of young persons.

(4) Where there is no medical inspector for an industrial establishment, the medical officer for the medical district in which the industrial establishment is situated shall be the medical inspector for that industrial establishment.

Powers and duties of medical inspectors

13. (1) The medical inspector for an industrial establishment shall at all reasonable times inspect the general register of the industrial establishment.

(2) A medical inspector shall investigate and report –

(a) on any case of death or injury caused by exposure in an industrial establishment to fumes or other noxious substances, or due to any other special cause specified in instructions of the Minister as requiring investigation;

(b) on any case of death or injury which the Chief Inspector in pursuance of any general or special instructions of the Minister may refer to him for that purpose; and

(c) on any case of disease of which he receives notice under this Act.

(3) For the purpose of an investigation under this section, a medical inspector has all the powers of an inspector under this Act and, in addition, a medical inspector has the power to enter any room in a building to which the person killed, injured or affected has been removed.

(4) Regulations may be made under this Act regulating –

(a) the duties of medical inspectors; and

(b) any special inquiry, examination or investigation to be held or performed by medical inspectors in pursuance of instructions or directions of the Minister.

Power of inspector to require certificate of fitness for work

14. (1) Where an inspector is of the opinion that the employment of a young person in an industrial establishment, or in any particular process or kind of work in an industrial establishment, is prejudicial to the health of the young person or to the health of other persons, he may, notwithstanding

anything contained in a certificate previously obtained of fitness of the young person for employment to the contrary, serve notice in writing on the occupier of the industrial establishment requiring that the employment of that young person in the industrial establishment or in the process or kind of work, be discontinued after the period stated in the notice, being not less than one or more than seven days after the service of the notice.

(2) No occupier of an industrial establishment shall, after the period mentioned in the notice under subsection (1), employ the young person to whom the notice relates contrary to requirements set out in the notice, unless the medical inspector for the industrial establishment has, after the service of the notice, personally examined the young person and certified that he is fit for employment in the industrial establishment or in the process or kind of work.

Fees of medical inspectors

15. (1) The fees to be paid to medical inspectors for carrying out their duties under this Act shall, in so far as they relate to any examination or certificate with respect to the fitness of a young person for employment in an industrial establishment or to any examination or medical supervision of persons employed in an industrial establishment carried out under the regulations, be paid by the occupier of the industrial establishment and in any other case shall be defrayed as an expense of carrying this Act into effect.

(2) The fees shall, subject to any agreement made between the medical inspector and the occupier of an industrial establishment in respect of the fees payable by the occupier be of an amount as may be prescribed.

Periodical report of the medical inspector to the Minister

16. Every medical inspector shall in each year make at the prescribed time a report in the prescribed form to the Minister as to the examinations made by the medical inspector and the other duties performed by him under this Act.

Appointment of technical examiners

17. (1) The Minister may, by notice published in the *Gazette*, designate persons who by virtue of training and experience are duly and properly

qualified to examine equipment, drawings, plans, or specifications of an industrial establishment, to be technical examiners for the purposes of carrying out an examination or any other prescribed duty.

(2) The Minister may by regulations prescribe the fees to be paid to technical examiners for carrying out an examination or any other prescribed duty.

Hearing Officer

18. The Minister may for the purpose of a complaint under section 35, or an appeal under section 76, appoint one or more persons to act as Hearing Officer.

PART IV

GENERAL DUTIES OF EMPLOYER, OCCUPIER AND EMPLOYEE

General duties of employer

19. (1) It shall be the duty of every employer to ensure, so far as is reasonably practicable, the safety, health and welfare at work of all his employees.

(2) Without prejudice to the generality of an employer's duty under subsection (1), the matters to which that duty extends include in particular –

(a) the provision and maintenance of plant and systems of work that are, so far as is reasonably practicable, safe and without risks to health;

(b) arrangements for ensuring, so far as is reasonably practicable, safety and absence of risks to health in connection with the use, handling, storage and transport of equipment, machinery, articles and substances;

(c) the provision of adequate and suitable protective clothing or devices of an approved standard to employees who in the course of employment are likely to be exposed to the risk of head, eye, ear, hand or foot injury, injury from air contaminant or any other bodily injury and the provision of adequate instructions in the use of such protective clothing or devices;

- (d) the provisions of such information, instruction, training and supervision as is necessary to ensure, so far as is reasonably practicable, the safety and health at work of his employees;
 - (e) so far as is reasonably practicable as regards an industrial establishment under the employer's control, the maintenance of it in a condition that is safe and without risks to health and the provision and maintenance of means of access to and egress from it that are safe and without such risks;
 - (f) the provision and maintenance of a working environment for his employees that is, so far as is reasonably practicable, safe, without risks to health, and adequate as regards amenities and arrangements for their welfare at work; and
 - (g) compliance with such other duties as may be imposed on him by the regulations.
- (3) An employer shall—
- (a) ensure that all hazardous chemicals present in an industrial establishment are labelled in a way easily understandable to the employees or are identified in the prescribed manner;
 - (b) obtain or prepare, as may be prescribed, an unexpired chemical safety data sheet for all hazardous chemicals present in an industrial establishment;
 - (c) ensure that the identification required by paragraph (a) and chemical safety data sheets required by paragraph (b) are available in English and such other languages as may be prescribed;
 - (d) ensure that when hazardous chemicals are transferred into other containers or equipment, the contents are indicated in a manner which will make known to employees, their identity, any hazards associated with their use, and any safety precautions to be observed; and
 - (e) ensure that information is provided on the handling and disposal of hazardous chemicals which are no longer required and containers which have been emptied but which may contain residues of hazardous chemicals, so that the risk to safety and health and to the

environment is eliminated or minimized.

(4) An employer shall ensure that a hazardous chemical is not used, handled or stored in an industrial establishment unless the prescribed requirements concerning identification, chemical safety data sheets and employee instruction and training are met.

(5) An employer shall advise the Chief Inspector in writing if the employer, after making reasonable efforts, is unable to obtain a label or chemical safety data sheet required by subsection (3).

(6) A copy of the most recent version of the inventory and of every unexpired chemical safety data sheet required by this Part in respect of hazardous chemicals in an industrial establishment shall be –

(a) made available by the employer in a manner as to allow examination by the employees;

(b) furnished by the employer to –

i. a representative of the committee, if any;

ii. an employee selected by the employees to represent them, if there is no committee or trade union;

iii. an employee selected by the employees to represent them;

(c) filed by the employer with the Chief Inspector on request or if so prescribed.

(7) No person shall remove or deface the identification referred to in subsection (3) (a), for a hazardous chemical.

(8) An employer of an industrial establishment of twenty-five or more employees, shall prepare or revise, in consultation with the representatives of his employees, a written statement of his general policy with respect to the safety and health of persons employed in the industrial establishment, specifying the organization and arrangements for the time being in force for carrying out that policy and the requirements of subsections (1) to (7), and the employer shall submit the statement and any revision thereof to the Chief Inspector and bring them to the notice of all persons employed in the industrial establishment.

(9) The Chief Inspector may, having regard to the statement submitted under subsection (8), direct the employer to appoint at his own expense, a safety practitioner who shall assist in ensuring that the policy and the provisions specified in **this section** are complied with.

(10) The Chief Inspector may direct an employer of fewer than twenty-five persons to effect under his supervision, a preparation or revision of the type referred to in subsection (8).

General duties of employer to pregnant female employee

20. (1) An employer shall, after being notified by a female employee that she is pregnant and upon production of a medical certificate to that effect, adapt the working conditions of the female employee to ensure that she is not –

- (a) involved in the use of, or exposed to, chemicals, substances or anything dangerous to the health of the unborn child; or
- (b) subjected to working conditions dangerous to the health of the unborn child,

and where appropriate, the employer may assign alternative work, where available, to her without prejudice to her right to return to her previous job.

(2) Where a female employee who has notified her employer of her pregnancy is no longer pregnant, she shall immediately upon discovery of this fact notify her employer and shall produce a medical certificate to that effect.

(3) No employer shall require or permit a pregnant employee or an employee who is nursing her child to perform work that is hazardous to her health or the health of the child.

(4) Notwithstanding any other law, during an employee's pregnancy, and for a period of six months after birth of her child, her employer shall offer her suitable, alternative employment on terms and conditions that are no less favourable than her ordinary terms and conditions of work, where the employee is required to perform work that poses a danger to her safety or health or that of her child, unless there is no other suitable alternative employment available or that in doing so the employer will incur costs

greater than ordinary administrative costs.

(5) An employee may, in relation to the general duties of an employer under this section or section 19, challenge a decision of the employer in accordance with section 84.

General duties of employer and self-employed person to persons other than employee

21. (1) It is the duty of every employer to conduct his undertaking in a way as to ensure, so far as is reasonably practicable, that persons not in his employment, who may be affected thereby are not exposed to risks to their safety or health.

(2) It is the duty of every self-employed person to conduct his undertaking in a way as to ensure, so far as is reasonably practicable, that he and other persons, not being his employees, who may be affected by his actions are not exposed to risks to their safety or health.

(3) In such cases as may be prescribed, it is the duty of every employer and every self-employed person, in the prescribed circumstances and in the prescribed manner, to give to persons, not being his employees, who may be affected by the way in which he conducts his undertaking, the prescribed information about such aspects of the way in which he conducts his undertaking as might affect their safety or health.

General duties of occupier

22. (1) It is the duty of every occupier of an industrial establishment to ensure that the following provisions are complied with –

(a) Parts VI to VIII; and

(b) other provisions of this Act or the regulations that impose duties on him.

(2) An occupier of an industrial establishment employing twenty-five or more persons shall prepare or revise, in consultation with employee representatives in the industrial establishment –

(a) a written statement of his general policy with respect to the safety and health of persons employed in the industrial establishment, specifying

the organization and arrangements for the time being in force for carrying out that policy and the provisions specified in subsection (1); and

- (b) a written emergency plan based on a risk assessment made in accordance with section 45 which shall include –
- i. suitable and rapid means of obtaining first aid help and transportation from the industrial establishment to a hospital for injured employees; and
 - ii. measures and procedures to be used to control a major fire, to react to serious damage to the industrial establishment, to evacuate the industrial establishment and to notify rescue personnel,

and the occupier shall submit the statement or the emergency plan and any revision thereof to the Chief Inspector and bring them to the notice of all persons employed in the industrial establishment.

(3) The Chief Inspector may, having regard to the statement or the emergency plan submitted under subsection (2), direct the occupier to appoint at his own expense, a safety practitioner who shall assist in ensuring that the policy and the provisions specified in subsection (1) or the requirements of the emergency plan are complied with.

(4) An occupier shall ensure, as far as is reasonably practicable, that no unsafe structure exists in the industrial establishment that is likely to expose persons to risks to bodily injury.

General duties of occupier to protect safety and health of public

23. (1) The occupier of an industrial establishment shall –

- (a) be under a duty to take steps **in accordance with an approved standard**, to protect the safety and health of the public in the vicinity of the industrial establishment from dangers created by the operation or processes carried on in the industrial establishment; and
- (b) take special care to ensure that plant and equipment used in the industrial establishment are of such integrity and that adequate safety systems exist to prevent the occurrence of fugitive emissions not conforming with an approved standard.

(2) Where the Chief Inspector is of the view that the steps taken under subsection (1) are inadequate, he may –

- (a) issue directions in writing to the occupier specifying the measures to be taken in an industrial establishment or in its vicinity to prevent injury to the public and the period within which those measures are to be taken; and
- (b) advise the Ministry responsible for health and the environment in writing, of the instructions referred to in paragraph (a).

(3) Directions under subsection (2) may include a requirement—

- (a) to obtain and implement advice from competent specialists or expert consultants;
- (b) to implement measures to abate nuisances arising from the operations carried on in the industrial establishment; or
- (c) to implement measures to prevent the occurrence of fugitive emissions.

(4) An occupier who fails to comply with directions issued under subsection (2) commits an offence.

General duties of employee

24. (1) It shall be the duty of every employee while at work –

- (a) to take reasonable care for the safety and health of himself and of other persons who may be affected by his acts or omissions at work;
- (b) as regards any duty or requirement imposed on his employer to co-operate with him so far as necessary to ensure that the duty or requirement is performed or complied with;
- (c) to report to his employer, any contravention under this Act or the regulations the existence of which he knows; and
- (d) to use correctly the personal protection clothing or devices provided for his use.

- (2) A person who contravenes with subsection (1) commits an offence.
- (3) An employee who wilfully and without reasonable cause does anything which results in the death or critical injury to another person at work, commits an offence and is liable to [the prescribed penalty].
- (4) An employer may discipline, in the customary manner, an employee who breaks the safety provisions of this Act.

Duty not to interfere with or misuse things provided under Act

25. (1) No person shall wilfully or recklessly interfere with or misuse any means, appliance, convenience or other thing provided in the interests of safety, health or welfare under this Act.
- (2) A person who contravenes subsection (1) commits an offence and is liable, on summary conviction to a fine of one thousand dollars or to imprisonment for three months or to both.

Certain charges prohibited

26. (1) No employer shall levy or permit any amount to be levied on any employee of his in respect of anything done or provided in pursuance of any specific requirement of this Act, except in respect of –
- (a) foodstuffs and other items served in a canteen;
 - (b) things lost or damaged wilfully or through the negligence of the employee; and
 - (c) protective clothing and devices where the employee is employed for one month or less.
- (2) The amount levied under subsection (1) (c), shall not be in excess of one-half of the value of the protective clothing or devices.

General duties of manufacturer and supplier

27. (1) A person who designs, manufactures, imports or supplies any technology, machinery, plant, equipment or material for use in any industrial establishment shall –

- (a) ensure, so far as is reasonably practicable, that the technology, machinery, plant, equipment or material is safe and without risks to health when properly used;
- (b) take such steps as are necessary to ensure that there will be available in connection with the use of the technology, machinery, plant, equipment or material, adequate information about the use for which it was designed and tested and about any conditions necessary to ensure that it will be safe and without risks to health or the environment when properly used.

(2) A person who undertakes the design or manufacture of any technology, machinery, plant, equipment or material shall carry out or arrange for the carrying out of any necessary research with a view to the discovery and, so far as is reasonably practicable, the elimination or minimization of any risks to safety or health to which the machinery, plant, equipment or material may give rise.

(3) It is the duty of any person who erects or installs any machinery, plant, equipment or component thereof, in any premises when that article is to be used by persons at work to ensure, as far as is reasonably practicable, that nothing about the way in which it is erected or installed makes it unsafe or exposes persons to risks to their safety or health when properly used.

(4) Nothing in the subsections (1), (2) or (3) shall be taken to require a person to repeat any testing, examination or research which has been carried out otherwise than by him or at his instance, in so far as it is reasonable for him to rely on the results thereof for the purpose of those provisions.

(5) Any duty imposed on any person under subsections (1), (2) or (3) shall extend only to things done in the course of a trade, business or other undertakings carried out by him (whether for profit or not) and to matters within his control.

(6) Where a person designs, manufactures, imports or supplies any technology, machinery, plant, equipment or material for, from or to another person on the basis of a written undertaking by that other person to take specified steps sufficient to ensure, so far as is reasonably practicable, that the article will be safe and without risks to health when properly used, the undertaking shall have the effect of relieving the first mentioned person from the duty imposed by subsection (1) to such extent as is reasonable having

regard to the terms of the undertaking.

(7) Where a person (“the ostensible supplier”) supplies any technology, machinery, plant, equipment or material to another (“the customer”) under a hire-purchase agreement, conditional sale agreement or credit-sale agreement, and the ostensible supplier –

(a) carries on the business of financing the acquisition of goods by others by means of such agreements; and

(b) in the course of that business acquired his interest in the machinery supplied to the customer as a means of financing its acquisition by the customer from a third person (“the effective supplier”),

the effective supplier and not the ostensible supplier shall be treated for the purpose of this section as supplying the technology, machinery, plant, equipment or material to the customer, and any duty imposed by this section on suppliers shall accordingly fall on the effective supplier and not on the ostensible supplier.

(8) For the purpose of this section, technology, machinery, plant or material 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 designed, manufactured, imported or supplied.

(9) A person who sells or lets on hire, or as agent of the seller or hirer causes or procures to be sold or let or hire, for use in an industrial establishment, any technology, machinery, plant or material which does not comply with the requirements of this section, commits an offence and is liable on summary conviction to a fine of [ten] thousand dollars.

PART V

RIGHT OF EMPLOYEES TO REFUSE WORK WHERE SAFETY OR HEALTH IN DANGER

Application of Part

28. (1) This Part does not apply with respect to an employee described in subsection (2) –

- (a) when a circumstance described in section 29 (a), (b), (c) or (d), is inherent in the employee's work or is a normal condition of the employee's employment; or
- (b) when the employee's refusal to work would directly endanger the life, safety or health of another person.

(2) The employee referred to in subsection (1) is—

(a) a member of the Royal Saint Vincent and the Grenadines Police Force;

(b) a prison officer;

(c) a person employed as a private investigator or security guard within the meaning of the Private Investigators and Security Guards Act;

(d) a person employed in the operation of—

- i. a hospital, clinic, health centre, nursing home, psychiatric institution, home for the aged, rehabilitation centre or other establishment;
- ii. a laboratory;
- iii. a power plant or technical service or facility used in conjunction with an institution, facility or service described in subparagraph (i) or (ii).

(3) Nothing in this Part shall be construed as relieving an employee referred to in subsection (2) from his duty referred to in section 24 (1)(c).

(4) An employer who receives a report pursuant to section 24 (1) (c), shall forthwith take steps to comply with section 15 (1) and report to the Chief Inspector the existence of the danger and any steps that he has taken or intends to take to remove the danger.

Refusal to work

29. An employee may refuse to work or do particular work where he has reason to believe that –

- (a) there is serious and imminent danger to himself or others or unusual circumstances have arisen which are hazardous or injurious to health or life;
- (b) any machine, plant, device or thing he is to use or operate is likely to endanger himself or another employee;
- (c) the physical condition of the industrial establishment or the part in which he works or is to work is likely to endanger himself; or
- (d) any machine, plant, device or thing he is to use or operate or the physical condition of the industrial establishment or part in which he works or is to work is in contravention of this Act or the regulations and such contravention is likely to endanger himself or another employee.

Report of refusal to work

30. (1) Upon refusing to work or do particular work the employee shall promptly report the circumstances of the intended refusal to the employer or the employer's representative and a representative of the committee.

(2) The employer shall cause the committee to forthwith investigate the report in the presence of the employee and in the presence of –

- (a) a person who because of knowledge, experience and training is selected by the trade union that represents the employee;
- (b) an employee selected by the employees to represent them, where there is no trade union; or

(c) the employer or his representative,

who shall be made available by his employer and shall attend without delay.

(3) Where there is no committee, the employee, upon refusing to work or do particular work, shall report the circumstance of the intended refusal to the employer or the employer's representative and the Chief Inspector who shall deal with it in accordance with section 32.

Refusal to work following investigation

31. Where, following the investigation or any steps taken to deal with the circumstances that caused the employee to refuse to work or do any particular work it is found that the employee has reasonable grounds to believe anything mentioned in section 29, the employee may refuse to work or to do the particular work and the employer or the employee or a person on behalf of the employer or employee shall cause an inspector to be notified of the refusal to work or do the particular work.

Investigation by inspector

32. (1) An inspector shall, within twenty-four hours from the time of the refusal to work, investigate the refusal in the presence of the employer or his representative, the employee and the person mentioned in section 30 (2)(a), (b) or (c).

(2) The inspector shall, following the investigation, decide whether the machine, plant, equipment, device or thing or the industrial establishment or part of the industrial establishment is likely to endanger the employee or another person and shall give his decision in writing within seventy-two hours to the employer, the employee and the person mentioned in section 30 (2) (a), (b) or (c) and the decision of the inspector shall be complied with unless the Chief Inspector decides otherwise.

(3) A person who is aggrieved by the decision of the inspector may apply to the Chief Inspector to review the decision of the inspector.

(4) A person who is aggrieved by a decision of the Chief Inspector may [seek redress under section 84].

(5) A person who fails to comply with the decision of an inspector in accordance with subsection (2) or the decision of the Chief Inspector under subsection (2) commits an offence.

Employee to be available

33. (1) Pending and during an investigation, or pending the making of a decision, under this Part, the employee shall, during normal working hours, be in a safe place in the industrial establishment and make himself or, as the case may require, be made available to assist, if necessary, in the carrying

out of the investigation.

(2) Subject to subsection (1) and section 29 and the provisions of any collective agreement, the employer may –

- (a) assign the employee reasonable alternative work during his normal hours; or
- (b) where assignment of reasonable alternative work is not practicable, give other directions to the employee.

Employee deemed to be at work

34. (1) Pending the investigation and decision of the Chief Inspector, no employee shall be assigned to use or operate the equipment, machine, device or article or to work in the industrial establishment or in the part of the industrial establishment being investigated as long as there is continuing imminent and serious danger to the life or health of any employee or person and until after the employer or his representative has taken remedial action, if necessary, to deal with the circumstances that caused the employee to refuse to do particular work.

(2) The employee who refuses to work under section 29, shall be deemed to be at work and his employer shall pay him at the regular or premium rate, as may be proper for the time extending from the time when the employee started to refuse to work under section 29 to the time when the inspector or the Chief Inspector has decided that **the machine, plant, equipment, device or thing or the industrial establishment or part of the industrial establishment is not likely to endanger the employee or another person.**

No discipline, dismissal or reprisal by employer

35. (1) No employer or person acting on behalf of an employer shall –

- (a) dismiss or threaten to dismiss an employee;
- (b) discipline or suspend or threaten to discipline or suspend an employee;
- (c) impose any penalty upon a employee, or intimidate or coerce an employee,

because the employee has –

- i. acted in compliance with this Act or the regulations or an order made the Act or regulations;
- ii. sought the enforcement of this Act or the regulations;
- iii. observed the procedures established by the employer; or
- iv. given evidence in a proceeding in respect of the enforcement of this Act or the regulations or **in an inquest under this Act [under section]**.

(2) Where an employee complains that an employer or person acting on behalf of an employer has contravened subsection (1), the employee may either have the matter dealt with by final and binding settlement, by arbitration under a collective agreement, if any, or file a complaint with the Minister.

(3) Where a complaint is filed with the Minister, the Minister shall direct that the complaint be determined on his behalf by the Hearing Officer.

(4) The Hearing Officer directed under subsection (3) shall inquire into any complaint filed under subsection (3).

(5) On an inquiry into a complaint filed under subsection (2), the Hearing Officer shall give such directions and issue such orders as he considers proper or necessary concerning the procedures to be adopted or followed.

(6) On an inquiry by the Hearing Officer into a complaint filed under subsection (2), the burden of proof that an employer or person acting on behalf of an employer did not act contrary to subsection (1) lies upon the employer or the person acting on behalf of the employer.

Entitlement to be paid

36. Pending and during an investigation under this Part, the employee who refuses to work in accordance with this Part shall be deemed to be at work and his employer shall pay him at the usual rate.

PART VI

SAFETY

Employment of young person on dangerous machines

37. (1) In every industrial establishment, no young person shall work at a machine to which this section applies, unless he has been fully instructed as to the dangers arising in connection with its operation, and the precautions to be observed, and –

- (a) has received sufficient training in work at the machine; or
- (b) is under adequate supervision by a person who has special knowledge and experience in the operation of the machine.

(2) This section applies to such machines as may be prescribed, being machines which are of such a dangerous character that a young person ought not to work at them unless the requirements of subsection (1) are complied with.

Protective clothing and devices

38. (1) All persons entering an area in an industrial establishment where they are likely to be exposed to the risk of head, eye, ear, hand or foot injury, injury from air contaminant or any other bodily injury, shall be provided with suitable protective clothing or devices of an approved standard and adequate instructions in the use of such protective clothing or devices, and no person shall be permitted to be in any such area unless he is wearing such protective clothing or device.

(2) In every area where protective clothing or devices are required to be worn under subsection (1), a notice to that effect shall be conspicuously displayed.

Removal of dust and fumes

39. (1) Where, in connection with the carrying on of a process, there is given off dust or fumes or other impurity of such a character and to such an extent as to be likely to be injurious or offensive to employees in an industrial establishment, all practicable measures shall be taken by the occupier to protect the employees against inhalation of the dust or fumes or

other impurity and to prevent its accumulation in any workroom, and where the nature of the process makes it practicable, exhaust appliances shall be provided and maintained as near as possible to the point of origin of the dust or fumes or other impurity, so as to prevent contamination of the air of the workroom.

(2) Where steam is discharged into a room where persons are normally required to work, effective steps shall be taken to dissipate the steam from that room.

Dangerous fumes and lack of oxygen in confined spaces

40. (1) The requirements of this section apply, with all necessary modifications, to any confined space while an employee is in that space.

(2) Subject to subsection (4), a confined space shall be entered only where –

(a) there is an easy egress from all accessible parts of the confined space;

(b) mechanical equipment in the confined space is –

- i. disconnected from its power source; and
- ii. locked out;

(c) all pipes and other supply lines whose contents are likely to create a hazard are blanked off; and

(d) the confined space is tested and evaluated by a competent person who –

- i. records the results of each test in a permanent record; and
- ii. certifies in writing in the permanent record that the confined space is free from hazard and will remain free from hazard while an employee is in the confined space having regard to the nature and duration of the work to be performed.

(3) Subject to subsection (4), a confined space in which there exists or is likely to exist a hazardous gas, vapour, dust or fume or an oxygen content of less than eighteen per cent or more than twenty-three per cent at atmospheric

pressure, shall be entered only when –

- (a) the requirements of subsection (2) are complied with;
- (b) the space is purged and ventilated to provide a safe atmosphere;
- (c) the measures necessary to maintain a safe atmosphere have been taken;
- (d) another employee with appropriate rescue equipment is stationed outside the confined space;
- (e) suitable arrangements have been made to remove the employee from the confined space should the employee require assistance; and
- (f) a person adequately trained in artificial respiration is conveniently available.

(4) A confined space in which there exists or is likely to exist, a hazardous gas, vapour, dust or fume or an oxygen content of less than eighteen per cent or more than twenty-three per cent at atmospheric pressure, that cannot be purged and ventilated to provide and maintain a safe atmosphere shall be entered only when –

- (a) all the requirements of subsection (2) except subparagraph (d)(ii) are complied with;
- (b) the employee entering is using a suitable breathing apparatus and a safety harness or other similar equipment to which is securely attached a rope, the free end of which is attached to rescue equipment operated by an employee equipped with an alarm, who is keeping watch outside the confined space;
- (c) the employee entering is using such other equipment as is necessary to ensure the employee's safety;
- (d) the safety harness, rope and other equipment referred to in paragraph (b) have been inspected by a competent person and are in good working order; and
- (e) a person adequately trained in artificial respiration is conveniently available.

(5) Subject to subsection 4 (b), where the gas or vapour in a confined space is or is likely to be explosive or flammable, the confined space shall be entered only where –

(a) the concentration of the gas or vapour does not or is not likely to exceed fifty per cent of the lower explosive limit of the gas or vapour; and

(b) the only work to be performed is that of cleaning or inspecting and of such a nature that it does not create any source of ignition.

(6) Cold work may be performed in a confined space that contains or is likely to contain an explosive or flammable gas or vapour where the concentration does not, and is not likely to exceed ten per cent of the lower explosive limit of the gas or vapour.

(7) The Minister may make regulations to provide for the process of certification of competent persons by the Chief Inspector.

(8) It shall be the duty of the occupier and in the case of employment, the employer to ensure as far as is reasonably possible that the requirements of this section are complied with to the satisfaction of the Chief Inspector.

(9) For the purposes of this section—

“competent person” means a person, whether employed by the occupier or not, who has adequate knowledge of and experience in dealing with dangerous fumes, and who is certified by the Chief Inspector, to perform examinations and issue certificates under this section; and

“fumes” includes gas or vapour.

Effective safeguarding of machinery

41. In an industrial establishment every –

(a) prime mover;

(b) part of the transmission machinery;

(c) dangerous part of a machine,

shall be effectively safeguarded in accordance with this Act.

Safety and health representative

42. (1) At an industrial establishment where no committee is required under section 43 and where the number of employees regularly exceeds five, the employer shall cause the employees to select at least one safety representative from among the employees at the industrial establishment who do not exercise managerial functions.

(2) If no safety and health representative is required under subsection (1) and no committee is required under section 43 for a industrial establishment, the Chief Inspector may, by order in writing, require an employer to cause the employees to select one or more safety and health representatives from among the employees at the industrial establishment who do not exercise managerial functions, and may provide in the order for the qualifications of such representatives.

Safety and health committee

43. (1) Where there are twenty-five or more persons employed at an establishment, every employer shall, after consulting the representatives of his employees, establish a safety and health committee at the industrial establishment.

(2) On the basis of prescribed criteria, the Chief Inspector may direct the establishment of a safety and health committee at an industrial establishment where fewer than twenty-five persons are employed and the employer of the industrial establishment shall comply with the order of the Chief Inspector after consulting the representatives of his employees.

Functions of safety and health committee

44. Every committee established at an industrial establishment shall –

(a) keep under review the measures taken to ensure the safety and health of persons at the industrial establishment;

(b) investigate any matter at an industrial establishment –

i. which a member of the committee or a person employed at the industrial establishment considers is not safe or is a risk to

health; and

ii. which has been brought to the attention of the employer;

(c) attempt to resolve any matter referred to in paragraph (b) and, if it is unable to do so, shall request the Chief Inspector to undertake an inspection of the industrial establishment for that purpose;

(d) have such other functions as may be prescribed.

Risk assessment

45. (1) Every employer shall make a suitable and sufficient annual assessment of –

(a) the risks to the safety and health of his employees to which they are exposed whilst they are at work; and

(b) the risks to the safety and health of persons not in his employment arising out of or in connection with the conduct by him of his undertaking,

for the purpose of identifying the measures he needs to take to comply with the requirements and prohibitions imposed upon him under the relevant statutory provisions.

(2) Any assessment referred to in subsection (1) shall be reviewed by the employer who made it if –

(a) there is reason to suspect that it is no longer valid; or

(b) there has been a significant change in the matters to which it relates,

and where as a result of any such review changes to an assessment are required, the employer or self-employed person concerned shall make them.

(3) Where the employer employs twenty-five or more employees, he shall record—

(a) the significant findings of the assessment; and

(b) any group of his employees identified by it as being especially at risk.

Health surveillance

46. (1) Every employer shall ensure that his employees are provided with such health surveillance as is appropriate having regard to the risks to their safety and health which are identified by the assessment.

(2) Every employer shall keep a record of the health surveillance referred to in subsection (1) in accordance with section [].

Means of escape in case of fire

47. (1) Every occupier shall ensure that his industrial establishment is certified in the **prescribed manner** by the Fire Brigade as being provided with such means of escape in the case of fire for the persons employed at the industrial establishment as may reasonably be required in the circumstances of each case and, if premises with respect to which no such certificate is in force are used as an industrial establishment, the occupier commits an offence and is liable, on summary conviction, to a fine of ten thousand dollars or to imprisonment for six months or to both and if the offence is a continuing one to a further fine of one thousand dollars for every day or part of a day during which the offence continues.

[It is the duty of the Fire Brigade to examine an industrial establishment and on being satisfied that subsection (1) is complied with, give a certificate to that effect.]

(2) The Fire Brigade may, by notice in writing, prohibit or restrict the use of an industrial establishment or require the occupier to make, within the period specified in the notice, alterations for the purposes of providing a safe means of escape in case of fire if –

(a) it appears to the Fire Brigade that dangerous conditions with regard to escape in case of fire exist in the industrial establishment; or

(b) it appears to an inspector that conditions referred to in paragraph (a) exist and the inspector requests the Fire Brigade in writing to examine the industrial establishment for the purposes of exercising his powers under this section.

(3) The occupier shall, within the period specified in the notice issued by the Fire Brigade under this section, carry out, the alterations required by the

notice, and upon their being carried out, the occupier shall notify the Fire Brigade in writing and the Fire Brigade shall amend the certificate or issue a new certificate, and shall send a copy of the amended or new certificate to the Chief Inspector, and if the alterations are not so carried out, the Fire Brigade shall, without prejudice to the taking of other proceedings, cancel the certificate.

(4) Where the occupier is aggrieved by a decision of the Fire Brigade under this section, he may object by way of complaint within seven days of the decision to the High Court and, pending the final determination of the complaint, the High Court may, on *ex parte* application by the occupier, make such interim orders as it thinks fit.

(5) A person who wilfully obstructs an officer of the Fire Brigade in the exercise of his duty under this Act is liable, on summary conviction, to a fine of two thousand dollars or to imprisonment for six months or to both.

Provision for adequate fire-fighting equipment

48. In every industrial establishment there shall be provided, maintained and kept readily available for use appropriate fire equipment approved by the Fire Brigade for fighting fire and the occupier shall ensure that a sufficient number of persons trained in using such equipment are available during the working hours and a record of the number of persons trained and the frequency of lectures and fire drills shall be kept and presented on demand, for inspection by the Fire Brigade.

PART VII

HEALTH

Cleanliness

49. Every industrial establishment shall be kept clean and free from effluvia arising from any drain, sanitary convenience or other source, and, without prejudice to the generality of the foregoing provision –

- (a) accumulations of dirt and refuse shall be removed daily, where practicable, by suitable methods from the floors, benches, furniture, furnishings and fittings of workrooms, and from the staircases and passages;

- (b) the floors of every workroom shall be kept clean and properly maintained;
- (c) effective means shall be provided, maintained and used to prevent the breeding of insects, rats, mice or other vermin; and
- (d) effective means shall be provided and maintained for the draining of wet floors and yards, where necessary.

Respiratory protection

50. Respiratory protection of an approved standard shall be provided and maintained, where necessary, for use by all persons in the industrial establishment.

Lighting

51. (1) In every part of an industrial establishment where employees are working or passing, there shall be provided and maintained sufficient and suitable lighting, natural or artificial, or both, in accordance with approved standards.

(2) In every industrial establishment, effective provision shall, so far as is practicable, be made for the prevention of –

- (a) glare, either directly from a source of light or by reflection from a smooth or polished surface; and
- (b) the formation of shadows to such an extent as to cause eye-strain or the risk of accident to any person.

Noise and vibration

52. (1) Every owner, occupier or employer shall take adequate steps to prevent hearing impairment caused by noise, and diseases caused by vibration, from occurring to persons in, or in the vicinity of, his industrial establishment and shall comply with such directives as –

- (a) the Chief Inspector may issue, in order to reduce the level of noise or vibration generated by a machine, device or process; and
- (b) the Chief Medical Officer may issue, in order to protect persons

employed from hearing impairment caused by noise or from diseases caused by vibration.

- (2) It shall be the duty of the owner, occupier or employer—
- (a) to ensure that all protective equipment necessary for compliance with subsection (1) is worn or used by employees at all appropriate times;
 - (b) to arrange for the initial and periodic medical examination and assessment of those employees who are exposed to the risk of injury to their hearing or of contracting a disease caused by vibration;
 - (c) to keep a record of the results of examinations and assessments under paragraph (b) which shall include audiometric tests and the monitoring of the work environment; and
 - (d) to arrange programmes for hearing conservation.

Overcrowding

53. (1) An industrial establishment shall not be so overcrowded as to cause risk of injury to the health of the persons employed therein.

(2) Without prejudice to the generality of subsection (1), in every workroom or other work space in an **industrial establishment** there shall be allowed for every person employed in the room or space not less than eleven and a half cubic metres of space, except that in any workroom or other work space with not less than one side, or the equivalent area of openings, being not less than twenty-five per cent of the total area of all sides of the room or space, open to the outer air the amount of space allowed for every person employed in the room or space shall not be less than seven and a half cubic metres.

Ventilation

54. Every occupier of an industrial establishment that is not ventilated by a functioning air-conditioning system shall secure and maintain therein adequate and suitable ventilation by the circulation of fresh air.

Medical examination of person employed in industrial establishment

55. (1) Where, after the commencement of this Act, a person seeks

employment in an industrial establishment, he shall be required by the employer to undergo medical examination as a pre-condition of permanent employment, except in such shops or places of work as the Minister may, by order published in the *Gazette*, exempt.

(2) The cost of the medical examination shall be borne by the employer.

(3) Where a medical inspector is of the opinion that the health of a person employed in an industrial establishment has been injured by reason of the nature of work he is called upon to do, the medical inspector may serve on the employer a written notice requiring him to permit a medical examination of that person, who may or may not submit to that examination.

(4) In this section, “medical examination” may include pathological, biochemical, physiological, radiological and audiometric tests and other relevant investigations.

Power to require medical supervision

56. Where the Minister is advised by the medical inspector and is of the opinion –

(a) that in any industrial establishment—

- i. a case of illness has occurred which he has reason to believe may be due to the nature of a process or other conditions of work;
- ii. by reason of changes in any process or in the substances used, or of the introduction of a new process, there may be risk of injury to the health of employees in that process; or
- iii. young persons are or are about to be employed in work which may cause risk of injury to their health; or

(b) that there may be risk of injury to the health of employees in an industrial establishment –

- i. from any substance or material brought to the industrial establishment to be used or handled therein; or
- ii. from any change of conditions of work or other conditions in

the industrial establishment,

he may make regulations specifying the arrangements to be made for the medical supervision of those employees or young persons or any class thereof.

PART VIII

WELFARE

Drinking water

57. (1) In every industrial establishment, effective arrangements shall be made to provide and maintain at suitable points conveniently situated for all persons employed therein, a sufficient supply of cool, wholesome, drinking water, except that no such point shall be situated within six metres (or twenty feet) of a washing place, sanitary convenience or other sources of contamination unless a shorter distance is approved in writing by the Chief Inspector.

(2) Except as otherwise permitted by the Chief Inspector, in every industrial establishment there shall be legibly and conspicuously displayed near any tank, pipe or other source of water or liquid unfit for human consumption, a notice to that effect.

Washing facilities

58. The occupier of every industrial establishment shall provide and maintain separately for men and women employed therein, adequate, clean and easily accessible washing facilities which are provided with soap and suitable hand drying materials or devices and such other provisions as are prescribed.

Sanitary convenience

59. The occupier of every industrial establishment shall –

(a) provide and maintain separately for men and women employed therein adequate, clean and easily accessible sanitary conveniences;

(b) provide and maintain suitable receptacles or disposal units for

use by women;

(c) provide adequate lighting and ventilation in sanitary conveniences and an open or ventilated space separating workrooms from such conveniences; and

(d) provide safe and covered access to sanitary conveniences.

Accommodation for clothing

60. In every industrial establishment, there shall be provided and maintained, distinct and apart from any sanitary convenience or lunchroom and separately for the use of men and women, adequate and suitable changing rooms with locks on the inside and accommodation for their clothing not worn during working hours.

First aid appliances

51. (1) In every industrial establishment, there shall be provided and maintained so as to be readily accessible during all working hours, such number of fully equipped first aid boxes or cupboards as may be prescribed.

(2) The Chief Inspector shall, where necessary, direct in writing the occupier of an industrial establishment to provide for deluge showers, eye baths and other similar first aid devices.

(3) Each first-aid box or cupboard shall be under the control of responsible persons who are trained in first-aid treatment and retested every three years and who shall always be readily available during the working hours of the factory.

(4) In every industrial establishment where more than two hundred and fifty persons are employed, there shall be provided and maintained an ambulance and a first-aid room of a prescribed size, containing the prescribed equipment and being in the charge of such medical and nursing staff as may be prescribed, unless the Chief Inspector, upon application, exempts an occupier from this section, in which case he shall issue a certificate to that effect to the occupier.

Restrooms or lunchrooms

62. In every industrial establishment the occupier shall provide and

maintain for the persons employed therein, adequate and suitable restrooms or lunchrooms, which lunchrooms shall be convenient for the eating of meals and shall be provided with adequate lighting, ventilation and drinking water.

PART IX

NOTIFICATION OF ACCIDENT AND OCCUPATIONAL DISEASE

Notification of accident

63. (1) Where a person is killed or critically injured from any cause at an industrial establishment, the employer shall immediately notify the Chief Inspector, the committee, the safety and health representative and the trade union, if any, of the occurrence by telephone, facsimile, email or other direct means and shall send a written notice of the occurrence, in the prescribed form and accompanied by the prescribed particulars, to the Chief Inspector within forty-eight hours of **being informed** of the occurrence.

(2) Where an incident which may be prejudicial to the safety or health of the public, or which has the potential of causing critical injury, including fire, explosion or the release of toxic substances, occurs in an industrial establishment, the occupier shall inform the Chief Inspector of the incident forthwith by telephone, facsimile, email or other direct means and shall send a written notice to the Chief Inspector within forty-eight hours of learning of the incident.

(3) Where an accident resulting in critical injury occurs and death follows the notification of the accident, a further notice in writing of the death shall be sent to the Chief Inspector by the employer within forty-eight hours of **being informed** of the death.

(4) Where the occupier is not the employer of a person who is killed or seriously injured in an industrial establishment, the employer shall, as soon as he becomes aware of the accident, report it to the occupier, and if he fails to do so, he commits an offence and is liable, on summary conviction, to a fine of ten thousand dollars or to imprisonment for three months or to both.

(5) Where any accident to which this section applies occurs to an employee whose services are for the time being temporarily contracted out to another person by the employer, such other person shall, if he fails to

report the accident to the primary employer, commits an offence, and the employer shall not be liable under the provisions of subsection (4) unless it is established that he knew of the accident.

(6) Where an accident causes injury to a person at an industrial establishment and the person is unable to perform his usual work or requires medical attention and such occurrence does not cause death or critical injury leading to disability, the employer shall inform the Chief Inspector of the particulars of the accident within four days of the occurrence of the accident.]

(7) An occupier and an employer shall keep a register of all accidents to which this section applies in the form prescribed by the regulations and each entry in the register shall be kept for not less than five years.

Preservation of scene of accident

64. (1) Where a person is killed or sustains a critical injury no person shall, except for the purpose of –

- (a) saving life or relieving human suffering;
- (b) maintaining an essential public utility service or a public transportation system; or
- (c) preventing unnecessary damage to equipment or other property,

interfere with, disturb, destroy, alter or carry away any wreckage or article at the scene or connected with the occurrence which gave rise to loss of life or the critical injury until permission so to do has been given by an inspector.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of five thousand dollars or to imprisonment for three months or to both.

Notification of occupational disease and other disease

65. (1) Where a medical practitioner who, having attended to a patient, forms the opinion that the patient is suffering from an occupational disease contracted in any industrial establishment or in the course of his employment, he shall, within forty-eight hours of having formed that opinion, send to the Chief Medical Officer a notice stating the disease from

which the medical practitioner is of the opinion that the patient is suffering and the industrial establishment in which the patient is or was last employed.

(2) The Chief Medical Officer shall send [forthwith] to the Chief Inspector any notice received under subsection (1).

(3) Where the Chief Inspector receives a notice under this section, he shall arrange, within two weeks of receiving the notice, for a medical inspector to investigate and submit a report on the measures required to eliminate the risk of the occupational disease.

(4) Where a medical practitioner fails to send any notice in accordance with the requirements of this section, he commits an offence and is liable on summary conviction to a fine of thirty thousand dollars.

(5) Any employer who believes or suspects, or has reasonable grounds for believing or suspecting that a case of occupational disease has occurred among his employees, shall forthwith send written notice of such case, in the prescribed form, and accompanied by the prescribed particulars to the Chief Inspector, the committee, the safety and health representative or trade union, if any, and to the Ministry responsible for health, and, in the case of employees employed in industrial establishments, to the medical inspector for the area within which the place of employment of such employees is situated, and the provisions of this Act with respect to the notification of accidents shall apply to any such case in like manner as to any accident as is mentioned in these provisions.

(6) If an employer is advised by or on behalf of a employee that a claim in respect of a prescribed disease is made to the National Insurance Services, the employer shall give notice in writing within four days of being so advised, to the Chief Inspector, the committee, the safety and health representative or trade union, if any, containing such information and particulars as are prescribed.

(7) As respects any class or description of place where employees are employed, the Minister may, by regulations, apply this section to any disease, other than an occupational disease.

Inquest in case of death by accident or occupational disease

66. (1) Where a coroner holds an inquest on the body of a person whose

death may have been caused by an accident or a disease of which notice is required by this Act to be given, the coroner shall, at least forty-eight hours before holding an inquest, send to the Chief Inspector a notice in writing of the time and place of holding the inquest.

(2) The following provisions shall have effect with respect to an inquest

—

(a) no person having a personal interest in or employed in, or in the management of, the industrial establishment in which the accident occurred or the disease was contracted shall be qualified to serve on the jury empanelled on the inquest and the coroner or other officer shall not —

- i. summon any person disqualified under this provision; or
- ii. allow any such person to be sworn, or to sit, on the jury;

(b) subject to the power of the coroner to disallow any question which in his opinion is not relevant or is otherwise not a proper question, the following persons shall be entitled to examine any witness either in person or through an attorney-at-law or an agent —

- i. an inspector;
- ii. a relative of the person in respect of whose death the inquest is being held;
- iii. the occupier of the industrial establishment in which the accident occurred or the disease was contracted;
- iv. the employer of the person in respect of whose death the inquest is being held;
- v. a person appointed in writing by the majority of the persons employed in the industrial establishment in which the accident occurred or the disease was contracted;
- vi. a person appointed in writing by a trade union, friendly society or other association of persons to which the deceased at the time of his death belonged or to which any person employed in the industrial establishment in which the accident occurred or the

disease was contracted belongs;

- vii. **a person appointed in writing by** an association of employers of which the employer is a member.

(3) Where at an inquest at which the Chief Inspector is not present evidence is given of neglect as having caused or contributed to the accident or disease, or of a defect in or about the industrial establishment appearing to the coroner to require a remedy, the coroner shall send to the Chief Inspector notice in writing of the neglect or defect.

(4). The provisions of this section shall be in addition to and not in derogation from, the provisions of the Coroners Act.

Inquiry into accidents and cases of occupational disease

67. Where the Minister is of the opinion that any accident occurring or any case of occupational disease contracted or suspected to have been contracted in an industrial establishment is a matter of public interest, he may so advise the Governor-General who may cause an inquiry to be held, in accordance with the Commissions of Inquiry Act, into such accident or case of industrial disease and its causes and circumstances.

Accident, explosions etc., at industrial establishment

68. Where any notification is not required under this Part and an accident, premature or unexpected explosion, fire, flood or inrush of water, failure of any equipment, machine, device, article, cave-in, subsidence, rockburst, or other incident as prescribed occurs at an industrial establishment, notice in writing of the occurrence shall be given to the Chief Inspector, the committee and the safety and health representative or trade union, if any, by the employer at the industrial establishment within two days of the occurrence containing such information and particulars as are prescribed.

PART X EMPLOYMENT OF YOUNG PERSON

Certificate of fitness for work

69. (1) No young person shall be employed to work in an industrial establishment for a period of three months or more unless a medical

practitioner, on the application of the young person or his parent, has examined the young person and has ascertained his fitness for work in that industrial establishment.

(2) On the advice of the Chief Inspector, the Minister may by order exempt any industrial establishment as he thinks fit from subsection (1).

(3) After an examination under subsection (1), the medical practitioner may grant to the young person, in the prescribed form, a certificate of fitness to work in the industrial establishment if he is satisfied that the young person has attained the prescribed physical standard and that he is fit for such work.

(4) Unless the medical practitioner examining a young person has personal knowledge of the place where the young person proposes to work and of the process in which the young person will be employed, he shall not grant a certificate under subsection (3).

(5) A certificate granted under subsection (3) –

(a) is valid for a period of twelve months from the date it is granted; and

(b) may be granted subject to conditions regarding the nature of work in which the young person may be employed, or conditions requiring a medical re-examination of the young person before the expiry of the period of twelve months.

(6) Where a certificate under this section is granted or renewed subject to conditions referred to in subsection (5) (b), the young person shall not be required to work in any industrial establishment except in accordance with those conditions.

Hours of work for young person

70. (1) No young person shall be employed –

(a) between the hours of 10:00 p.m. and 7:00 a.m.;

(b) during the period of twelve consecutive hours immediately following the end of his last work period; or

(c) for more than twelve hours a day.

(2) The hours of employment shall include a rest period of at least one hour.

(3) No young person shall be required to work more than forty-eight hours in any week.

(4) **In relation to such industrial establishment as he thinks fit**, the Minister may, by order published in the *Gazette*, vary or waive the provisions of this section.

Duty to maintain register

71. (1) An employer shall maintain a register of young persons employed at his establishment, recording the names of young persons, the date of their employment, particulars of the certificate of fitness, the nature of their work and such other particulars in such form as the Minister may prescribe.

(2) An employer who contravenes subsection (1) commits an offence.

Power to require medical examination

72. Where an inspector is of the opinion –

(a) that a person working in an industrial establishment without a certificate of fitness is a young person; or

(b) that a young person working in an industrial establishment is no longer fit to work in the capacity stated therein,

he may serve on the employer a notice requiring that such young person shall be examined by a medical practitioner and such young person shall not, if the inspector directs, be employed in an industrial establishment until he has been so examined and has been granted a certificate of fitness or a renewed certificate of fitness, as the case may be, under section 69.

PART IX
ENFORCEMENT

Seizure of documents or articles

73. (1) While acting under the authority of this Act, an inspector may, without a warrant or court order, seize any article or document that is produced to him or that is in plain view, if the inspector reasonably believes that this Act or a regulation has been contravened and that the article or document will afford evidence of the contravention.

(2) The inspector may remove the article or document seized or may detain it in the place in which it is seized.

(3) The inspector shall inform the person from whom the article or document is seized as to the reason for the seizure and shall give the person a receipt for it and the person from whom the article or document is seized, shall, immediately on receiving information as to the reason for the seizure and the receipt of the article or document seized, bring such information and receipt to the attention of his employer or the committee, the safety and health representative or trade union, if any.

(4) The inspector shall bring an article or document seized under the authority of this section before the Chief Inspector or, if that is not reasonably possible, shall report the seizure to the Chief Inspector.

Orders by inspectors for non-compliance

74. (1) Where an inspector finds that a provision of this Act or the regulations is being contravened, the inspector may order, orally or in writing, the owner, employer, or person whom he believes to be in charge of an industrial establishment or the person whom the inspector believes to be the contravener to comply with the provision and may require the order to be carried out forthwith or within such period of time as the inspector specifies.

(2) Where an inspector makes an oral order under subsection (1), the inspector shall confirm the order in writing before leaving the industrial establishment.

(3) An order given under subsection (1) shall indicate generally the nature of the contravention and where appropriate the location of the contravention.

(4) An order given under subsection (1) may require an employer to submit to the Chief Inspector a compliance plan prepared in the manner and including such items as required by the order.

(5) The compliance plan shall specify what the employer plans to do to comply with the order and when the employer intends to achieve compliance.

(6) Where an inspector makes an order under subsection (1) and finds that the contravention of this Act or the regulations is a danger or hazard to the safety and health of an employee, the inspector may –

(a) order that any place, equipment, machine, device, article or any process or chemical shall not be used until the order is complied with;

(b) order that the work at the industrial establishment as indicated in the order shall stop until the order to stop work is withdrawn or cancelled by an inspector after an inspection;

(c) order that the industrial establishment where the contravention exists be cleared of employees and isolated by barricades, fencing or any other means suitable to prevent access thereto by an employee until the danger or hazard to the safety or health of an employee is removed.

(7) Despite subsection (6) (b), an employer who gives notice to an inspector of compliance with an order made under subsection (6) may resume work pending an inspection and decision by an inspector respecting compliance with the order if, before the resumption of work, a member of the committee or a safety and health representative advises an inspector that in his opinion the order has been complied with.

(8) In addition to the orders that may be made under subsection (6), where an inspector makes an order or the Chief Inspector has been advised of an employer's inability to obtain an unexpired chemical safety data sheet, the inspector may order under this section that the hazardous chemical shall not be used or that the article that causes, emits or produces the hazardous physical agent not to be used or operated until the order is withdrawn or

cancelled.

(9) Where an inspector makes an order under this section, he may affix to the industrial establishment or to any equipment, machine, device or article a copy of the order or a notice in the prescribed form and no person, except an inspector, shall remove such copy or notice unless authorized to do so by an inspector.

(10) Where an inspector makes an order in writing or issues a report of his inspection to an owner, employer or person in charge of the industrial establishment –

(a) the owner, employer or person in charge of the industrial establishment shall –

- i. forthwith cause a copy of the order or report to be posted in a conspicuous place or places at the industrial establishment where it is most likely to come to the attention of the employees;
- ii. furnish a copy of the order or report to the safety and health representative or the committee, if any; and

(b) the inspector shall cause a copy of the order or report to be furnished to a person who has complained of a contravention of this Act or the regulations.

(11) An inspector shall hold or afford to an owner, employer or any other person an opportunity for a hearing before making an order.

Entry into barricaded area

75. Where an order is made under section 74 (6) (c), no owner, employer or supervisor shall require or permit an employee to enter the industrial establishment except for the purpose of doing work that is necessary or required to remove the danger or hazard and only where the employee is protected from the danger or hazard.

Notice of compliance

76.(1) Within three days after an employer who has received an order under section 74 believes that compliance with the order has been achieved,

the employer shall submit to the Chief Inspector a notice of compliance.

(2) The notice shall be signed by the employer and shall be accompanied by –

(a) a statement of agreement or disagreement with the contents of the notice, signed by a member of the committee representing employees or by a safety and health representative; or

(b) a statement that the member or representative has declined to sign the statement referred to in paragraph (a).

(3) The employer shall post the notice of compliance submitted under subsection (1) for a period of fourteen days following its submission to the Chief Inspector in a place or places in the industrial establishment where it is most likely to come to the attention of employees.

(4) Despite the submission of a notice of compliance, an employer achieves compliance with an order under section 68 when an inspector determines that compliance has been achieved.

Injunction proceedings

77. In addition to any other remedy or penalty therefor, where an order under section 74 (6) is contravened, such contravention may be restrained upon an application made to the High Court at the instance of the Chief Inspector.

Appeals from order of inspector

78. (1) An employer, owner, employee or trade union which considers himself or itself aggrieved by any order made by an inspector under this Act or the regulations may, within seven days of the making of the order, appeal to the Minister.

(2) An appeal to the Minister may be made in writing or orally or by telephone, but the Minister may require the grounds for appeal to be specified in writing before the appeal is heard.

(3) The appellant, the inspector from whom the appeal is taken and such other persons as the Minister may specify shall be parties to an appeal under this section.

(4) The Minister may, having regard to the circumstances, determine the appeal or direct that an appeal be determined on his behalf, by the Hearing Officer.

(5) The Minister or, where the Hearing Officer has been directed under subsection (4), the Hearing Officer so directed, may, give such directions and issue such orders as he considers proper or necessary concerning the procedures to be adopted or followed.

(6) On an appeal under this section., the Minister or, where the Hearing Officer has been directed under subsection (4), the Hearing Officer so directed, may substitute his findings for those of the inspector who made the order appealed from and may rescind or affirm the order or make a new order in substitution therefor, and for such purpose has all the powers of an inspector and the order of the Minister or the Hearing Officer shall stand in the place of and have the like effect under this Act and the regulations as the order of the inspector.

(7) In this section, an order of an inspector under this Act or the regulations includes any order or decision made or given or the imposition of any term or condition therein by an inspector under the authority of this Act or the regulations or the refusal to make an order or decision by an inspector.

(8) A decision of the Minister or the Hearing Office under this section is final.

(9) On an appeal under this section, the Minister or, where the Hearing Officer has been directed under subsection (4), the Hearing Officer so directed, may suspend the operation of the order appealed from pending the disposition of the appeal.

Obstruction of inspector

79. (1) No person shall hinder, obstruct, molest or interfere with or attempt to hinder, obstruct, molest or interfere with an inspector in the exercise of a power or the performance of a duty under this Act or the regulations.

(2) Every person shall furnish all necessary means in the person's power to facilitate any entry, inspection, examination, testing or inquiry by an

inspector in the exercise of his powers or performance of his duties under this Act or the regulations.

(3) No person shall knowingly furnish an inspector with false information or neglect or refuse to furnish information required by an inspector in the exercise of his duties under this Act or the regulations.

(4) No person shall interfere with any monitoring equipment or device in an industrial establishment.

(5) No person shall knowingly –

(a) hinder or interfere with a committee, a committee member or a safety and health representative in the exercise of a power or performance of a duty under this Act.

(b) furnish with false information a committee, a committee member or a safety and health representative with false information in the exercise of a power or performance of a duty under this Act; or

(c) hinder or interfere with an employee selected by a trade union or trade unions or a employee selected by the employees to represent them in the exercise of a power or performance of a duty under this Act.

Information confidential

80. (1) Except for the purposes of this Act and the regulations or as required by law –

(a) an inspector, a person accompanying an inspector or a person who, at the request of an inspector, makes an examination test or inquiry, shall not publish, disclose or communicate to any person any information, material statement, report or result of any examination, test or inquiry acquired, furnished, obtained, made or received under the powers conferred under this Act or the regulations;

(b) no person shall publish, disclose or communicate to any person any secret manufacturing process or trade secret acquired, furnished, obtained, made or received under the provisions of this Act or the regulations;

(c) no person to whom information is communicated under this Act and

the regulations shall divulge the name of the informant to any person;
and

(d) no person shall disclose any information obtained in any medical examination, test or X-ray of an employee made or taken under this Act except in a form calculated to prevent the information from being identified with a particular person or case.

(2) No employer shall seek to gain access, except by an order of the court or other tribunal or in order to comply with other legislation, or in order to employ or continue to employ an employee in a food manufacturing establishment, to a health record concerning a employee without the employee's written consent.

(3) An inspector or a person who, at the request of an inspector, accompanies an inspector, or a person who makes an examination, test, inquiry or takes samples at the request of an inspector, is not a compellable witness in a civil suit or any proceeding, except at an inquest under this Act, respecting any information, material, statement or test acquired, furnished, obtained, made or received under this Act or the regulations.

(4) The Chief Inspector may communicate or allow to be communicated or disclosed information, material, statements or the results of a test acquired, furnished, obtained, made or received under this Act or the regulations.

(5) Subsection (1) shall not apply so as to prevent any person from providing any information in the possession of the person, including confidential business information, in a medical emergency for the purpose of diagnosis or treatment.

Copies of reports

81. The Chief Inspector may, upon receipt of a request in writing from the owner of an industrial establishment who has entered in an agreement to sell the industrial establishment and upon payment of the prescribed fee, furnish to the owner or a person designated by the owner copies of reports or orders of an inspector made under this Act in respect of the industrial establishment as to its compliance with this Act or the regulations.

Preservation of registers and records

82. (1) Every register or record kept under this Act shall be preserved and kept available for inspection by an inspector for at least five years after the date of the last entry in the register or record, or for such other period as may be prescribed for any class or description of register or record, except in the case of a health record which shall be kept for at least twenty-five years.

(2) Where an employer who holds health records in accordance with subsection (1) ceases to trade, he shall forthwith notify the Chief Inspector in writing and offer the records to the Chief Inspector.

Immunity

83. No action or other proceeding for damages or prohibition shall be instituted respecting any act done in good faith in the execution or intended execution of a person's duties under this Act or in the exercise or intended exercise of a person's powers under this Act or for any alleged neglect or default in the execution or performance in good faith of the person's duties or powers if the person is –

- (a) an inspector, a medical inspector, a technical examiner or a member of the Advisory Council;
- (b) a safety and health representative or a member of the committee;
- (c) an employee selected by a trade union or trade unions or by employees to represent them;
- (d) the Labour Commissioner; or
- (e) the Chief Inspector.

PART XII

OFFENCES, PENALTIES AND LEGAL PROCEEDINGS

Onus of proving limits of what is practicable, etc

84. In any proceedings for an offence under any of the relevant statutory provisions consisting of a failure to comply with a duty or requirement to do something so far as is practicable, or to use the best

practicable means to do something, it shall be for the accused to prove that it was not practicable or not reasonably practicable to do more than was in fact done to satisfy the duty or requirement, or that there was no better practicable means than was in fact used to satisfy the duty or requirement.

Criminal and other remedies

85. (1) Notwithstanding anything contained in this Act, but subject to subsection (2), where a person fails to comply with any prohibition, restriction, instruction or directive issued under this Act or the regulations, he commits an offence.

(2) A person, employer, occupier or owner of premises only commits an offence under this Act or the regulations if it is proved that he failed to take reasonable steps to prevent the commission of the offence.

(3) Where an offence under this Act or the regulations is proved to have been committed with the consent, connivance or acquiescence of, or to have been facilitated by neglect on the part of a director, manager, secretary or other officer of a company, such director, manager, secretary or other officer, as well as the company, is liable to be proceeded against for the commission of the offence.

Redress

86. An aggrieved person may apply to a [High] Court for redress and the Court may make an award in favour of the aggrieved person and impose any penalty, other than a term of imprisonment, that the [High] Court may impose in respect of that contravention or failure to comply.

Power of Court to order remedy

87. (1) Where an employer, occupier or owner is convicted of an offence under this Act or the regulations, the Court may, in addition to or instead of imposing a penalty, order him within the time specified in the order, to take such steps as may be specified for remedying the matters in respect of which the offence occurred, and may, on the application of the employer, occupier or owner, extend the time so specified.

(2) Where an order referred to in subsection (1) is made, the employer, occupier or owner shall not be liable under this Act in respect of the

continuation of the contravention during the time allowed by the Court, but if, after the expiration of that time as originally specified or extended, the order is not complied with, the employer, occupier or owner commits an offence and is liable, on summary conviction, to a fine of ten thousand dollars, for each day on which the non-compliance continued after the said expiration.

Penalty where none is expressly provided

88. Subject to the provisions of this Act, any person who commits an offence under this Act for which no penalty is expressly provided, is liable, on summary conviction to a fine of twenty thousand dollars and to imprisonment for one year, and if the offence in respect of which he was convicted is continued after the conviction, he is liable to a further fine of ten thousand dollars for each day on which the offence continues.

Fines in case of death or injury

89. (1) Subject to subsections (2), where a person dies, is critically injured or develops an **occupational** disease in consequence of an employer, occupier or owner having contravened this Act, the employer, occupier or owner shall, without prejudice to any other liability or right of action arising out of the death or critical injury or disease, be liable to a fine of one hundred thousand dollars, or of an amount equivalent to three years pay of that person, whichever is greater, and the whole or part of the fine may be applied for the benefit of the victim or of his estate, or otherwise as the Court may determine.

(2) In the case of an occupational disease, the employer, occupier or owner shall not be liable to a fine under this section unless the disease resulted directly from the contravention.

Fine for offence by parent

90. Where a young person is employed in contravention of this Act, the parent of the young person commits an offence and is liable, on summary conviction, to a fine of five thousand dollars, unless it appears to the Court that the contravention occurred without the consent, connivance, or wilful default of the parent.

Forgery of certificates, false entries and false declarations

91. Where a person—

- (a) forges or counterfeits a certificate required by or for the purposes of this Act;
- (b) gives or signs a certificate knowing it to be false in any material particular (hereinafter referred to as “a false certificate”);
- (c) knowingly utters or makes use of a false certificate;
- (d) knowingly makes use of, as applying to a person, a certificate which does not so apply;
- (e) personates a person named in a false certificate;
- (f) wilfully connives at forging, counterfeiting, giving, signing, uttering or making use of a false certificate;
- (g) wilfully makes a false entry in a register, notice, certificate or document required by, or for the purpose of, this Act to be kept, served or sent;
- (h) wilfully makes or signs a declaration required by, or for the purpose of, this Act knowing the contents thereof to be false;
- (i) knowingly makes use of a false entry or false declaration; or
- (j) personates or pretends to be an inspector or medical inspector,

he commits an offence and is, without prejudice to any other liability, liable, on summary conviction, to a fine of twenty-five thousand dollars or to imprisonment for three years or to both.

Provision for employer, occupier or owner to exempt himself from liability

92. (1) Where an employer, occupier or owner is charged with an offence under this Act, he may make a complaint against any person whom he alleges to be the actual offender and the proceedings against the employer, occupier or owner and the person alleged to be the actual offender may be heard and determined at the same time.

(2) Where during proceedings instituted in accordance with this section, the employer, occupier or owner is acquitted and the Court finds that the person alleged to be the actual offender committed the offence, that person is in addition to any other penalty, liable to pay any costs incidental to the proceedings.

(3) Where an offence has been committed under this Act and an inspector is satisfied –

- (a) that the employer, occupier or owner has taken reasonable steps to prevent the contravention;
- (b) as to the identity of the person who is alleged to have committed the offence; and
- (c) that it was committed without the consent, connivance or wilful default of the employer, occupier or owner, or in disobedience of his orders,

the inspector may proceed against the alleged offender without first proceeding against the employer, occupier or owner.

Proceedings against persons other than employer, occupier or owner

93. Where under any of the provisions of this Act, a person is substituted for the employer, occupier or owner, any order, summons, notice or proceedings, which for the purpose of those provisions is by this Act required or authorized to be served or taken in relation to the employer, occupier or owner, shall be served on or taken in relation to that person.

Procedure for prosecution

94. (1) In proceedings under this Act, a complaint may state the name of the ostensible employer, occupier or owner, as the case may require.

(2) Where, with respect to or in consequence of any accident in an industrial establishment, a report is made by a commission of inquiry or a coroner's inquest is held, and it appears from the report or from the proceedings at the inquest that this Act was not complied with at or before the time of the accident, summary proceedings against the person liable to be proceeded against in respect of such non-compliance may be commenced at any time within six months after the making of the report or the conclusion

of the inquest.

Appeal from order of Court

95. Any person aggrieved by an order made by the Court under this Act may appeal to the Court of Appeal [High Court].

Limitation of time for prosecution

96. A complaint for an offence under this Act shall be made within six months of the date on which the alleged commission of the offence came to the knowledge of an inspector.

Time limit

97. All proceedings under this Act shall be initiated no more than two years after the cause of action has arisen.

Special provision as to evidence

98. (1) Where a person is found in an industrial establishment when work is in progress or the machinery is in motion, except during the intervals for meals or rest, he shall, until the contrary is proved, be deemed for the purposes of this Act to be employed in the factory.

(2) Where in proceedings under this Act involving a young person it appears to the Court that the young person is apparently of or below the age alleged by the complainant, the burden of proof is on the defendant to prove that the young person is not of or below that age.

(3) Where an entry is required by this Act to be made in a register or record, the entry made by the employer, occupier or owner or on his behalf shall, as against him, be *prima facie* evidence of the facts therein stated, and the fact that an entry so required with respect to the observance of a provision of this Act has not been made, shall be *prima facie* evidence that that provision has not been observed.

Serving and sending document

99. A document required or authorized to be served or sent under this Act may be served on or sent to –

- (a) an individual, by delivering it to him or sending it by registered post to his residence;
- (b) a firm, by delivering it to a partner of the firm or sending it by registered post to the registered office of the firm; and
- (c) a body corporate –
 - i. by delivering it, to a person in a position of responsibility at its industrial establishment or registered office; or
 - ii. by sending it by registered post to its industrial establishment or registered office.

Power of Court to modify agreement

100. If by reason of an agreement between the owner and the occupier of premises, the whole or a part of which has been let as an industrial establishment, the owner or occupier is prevented from carrying out structural or other alterations to the premises that are necessary to enable him to comply with this Act, or in order to conform with any standard or requirement imposed by or under this Act, the owner or occupier may apply to the High Court, and the Court, after hearing the parties and any witnesses whom they desire to call, may make an order setting aside or modifying the terms of the agreement as the Court considers just and equitable in the circumstances of the case.

Power of Court to apportion expenses

101. (1) Where in premises, the whole or a part of which has been let as an industrial establishment, structural or other alterations are required in order to comply with this Act, or in order to conform with any standard or requirement imposed by or under this Act, and there is disagreement as to who should pay the expenses of such alterations, either party may apply to the High Court for a resolution of the dispute.

(2) On receiving an application under subsection (1), the High Court may, after hearing the parties and any witnesses whom they desire to call and after having regard to the terms of the contract between the parties, make such order concerning the apportionment of expenses as the Court considers just and equitable in the circumstances of the case.

PART XIII

MISCELLANEOUS

Power to make regulations

102. (1) The Minister may make regulations for the purposes of promoting the safety, health and welfare of employees and generally for the purpose of carrying out the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), regulations may –

- (a) impose conditions on the use of, or require anything to be done to or in connection with systems of work, machinery or plant or a class or description of machinery or plant;
- (b) prescribe anything required to be prescribed by this Act;
- (c) prohibit, limit or control the use of any material or process;
- (d) require special supervision, control, training or inspection of all persons or a class of persons in connection with any manufacture, machinery, plant, process or description of work;
- (e) require the provision of protective clothing and devices, welfare facilities, or any other thing necessary to promote the health and welfare of all employees or a class of employee;
- (f) impose duties on occupiers, owners, hirers, employers, employees and other persons;
- (g) provide for the examination and testing of mechanical or other devices required to be examined and tested under this Act;
- (h) declare as dangerous a process in which persons employed are exposed to serious risk of bodily injury, poisoning or disease;
- (i) provide for the medical examination of persons employed or seeking to be employed in a dangerous process and prohibit the employment in the process of such persons who are not certified as medically fit for such employment;

- (j) provide for the protection of persons employed in a dangerous process and of other persons in the vicinity of the place where that process is carried on;
 - (k) provide for the safety, health and welfare of persons employed in the construction and maintenance of buildings, agricultural work, field operations and other outdoor activities;
 - (l) provide for the setting up of joint safety and health committees comprising representatives from the management and labour sectors;
 - (m) provide for the prevention of the overcrowding of industrial establishments, which regulations may authorize the Chief Inspector after consultation with the Chief Medical Officer, to issue a certificate exempting an occupier of an industrial establishment from compliance with any of those Regulations;
 - (n) provide for the imposition of fines not exceeding two hundred thousand dollars for any contravention thereof;
 - (o) provide for the payment of fees for services rendered in accordance with this Act; and
 - (p) provide for the qualification of safety practitioners.
- (3) Regulations made under this section shall be subject to negative resolution of the House of Assembly.

Power of Minister to amend the Schedule

103. Subject to negative resolution of the House of Assembly, the Minister may, by order published in the *Gazette*, amend the Schedule.

Repeals

104. (1) The following Acts are repealed –

- (a) Factories Act; and
- (b) Accidents and Occupational Diseases (Notification) Act.

(2) Regulations made under the Acts repealed by subsection (1) and in force immediately before the commencement of this Act continue in force as if made under this Act, so far as they are not inconsistent with the provisions of this Act.

Working Draft

SCHEDULE

LIST OF OCCUPATIONAL DISEASES

1. **DISEASES CAUSED BY AGENTS**
 - 1.1. *Diseases caused by chemical agents*
 - 1.1.1 Diseases caused by beryllium or its toxic compounds
 - 1.1.2 Diseases caused by cadmium or its toxic compounds
 - 1.1.3 Diseases caused by phosphorus or its toxic compounds
 - 1.1.4 Diseases caused by chromium or its toxic compounds
 - 1.1.5 Diseases caused by manganese or its toxic compounds
 - 1.1.6 Diseases caused by arsenic or its toxic compounds
 - 1.1.7 Diseases caused by mercury or its toxic compounds
 - 1.1.8 Diseases caused by lead or its toxic compounds
 - 1.1.9 Diseases caused by fluorine or its toxic compounds
 - 1.1.10 Diseases caused by carbon disulphide
 - 1.1.11 Diseases caused by the toxic halogen derivatives of aliphatic or aromatic hydrocarbons
 - 1.1.12 Diseases caused by benzene or its toxic homologues
 - 1.1.13 Diseases caused by toxic nitro-and amino-derivatives of benzene or its homologues
 - 1.1.14 Diseases caused by nitroglycerin or other nitric acid esters
 - 1.1.15 Diseases caused by alcohols, glycols, ketones
 - 1.1.16 Diseases caused by asphyxiants; carbon monoxide, hydrogen cyanide or its toxic derivatives, hydrogen sulphide
 - 1.1.17 Diseases caused by acrylonitrile
 - 1.1.18 Diseases caused by oxides of nitrogen
 - 1.1.19 Diseases caused by vanadium or its toxic compounds
 - 1.1.20 Diseases caused by antimony or its toxic compounds
 - 1.1.21 Diseases caused by hexane
 - 1.1.22 Diseases of teeth caused by mineral acids
 - 1.1.23 Diseases caused by pharmaceutical agents
 - 1.1.24 Diseases caused by thallium or its compounds
 - 1.1.25 Diseases caused by osmium or its compounds
 - 1.1.26 Diseases caused by selenium or its compounds
 - 1.1.27 Diseases caused by copper or its compounds
 - 1.1.28 Diseases caused by tin or its compounds
 - 1.1.29 Diseases caused by zinc or its compounds
 - 1.1.30 Diseases caused by ozone, phosgene

1.1.31 Diseases caused by irritants: benzoquinone and other corneal irritants

1.1.32 Diseases caused by any other chemical agents not mentioned in the preceding items 1.1.1 to 1.1.31, where a link between the exposure of an employee to these chemical agents and the diseases suffered is established

1.2. *Diseases caused by physical agents*

1.2.1 Hearing impairment caused by noise

1.2.2 Diseases caused by vibration (disorders of muscles, tendons, bones, joints, peripherals blood vessels or peripherals nerves)

1.2.3 Diseases caused by work in compressed air

1.2.4 Diseases caused by ionizing radiations

1.2.5 Diseases caused by heat radiation

1.2.6 Diseases caused by ultraviolet radiation

1.2.7 Diseases caused by extreme temperature (e.g., sunstroke, frostbite)

1.2.8 Diseases caused by any other physical agents not mentioned in the preceding items 1.2.1 to 1.2.7, where a direct link between the exposure of an employee to these physical agents and the diseases suffered is established

1.3 *Diseases caused by biological agents*

1.3.1 Infectious or parasitic diseases contracted in an occupation where there is a particular risk of contamination

2. DISEASES BY TARGET ORGAN SYSTEMS

2.1 *Occupational respiratory diseases*

2.1.1 Pneumoconioses caused by sclerogenic mineral dust (silicosis, anthracosilicosis, asbestosis) and silicotuberculosis, provided that silicosis is an essential factor in causing the resultant incapacity or death

2.1.2 Bronchopulmonary diseases caused by hard-metal dust

2.1.3 Bronchopulmonary diseases caused by cotton, flax, hemp or sisal dust (byssinosis)

2.1.4 Occupational asthma caused by recognized sensitizing agents or irritants inherent to the work process

2.1.5 Extrinsic allergic alveolitis caused by the inhalation of organic dusts, as prescribed by national legislation

2.1.6 Siderosis

2.1.7 Chronic obstructive pulmonary diseases

2.1.8 Diseases of the lung caused by aluminium

2.1.9 Upper airways disorders caused by recognized sensitizing agents or irritants inherent to the work process

2.1.10 Any other respiratory disease not mentioned in the preceding items

2.1 to 2.1.9, caused by an agent where a direct link between the exposure of an employee to this agent and the disease suffered is established

2.2 *Occupational skin diseases*

2.2.1 Skin diseases caused by physical, chemical or biological agents not included under other items

2.2.2 Occupational vitiligo

2.3 *Occupational musculo-skeletal disorders*

2.3.1 Musculo-skeletal diseases caused by specific work activities or work environment where particular risk factors are present

Examples of such activities or environment include –

- (a) rapid or repetitive motion
 - (b) forceful exertion
 - (c) excessive mechanical force concentration
 - (d) awkward or non-neutral postures
 - (e) vibration
- Local or environmental cold may increase risk

3. OCCUPATIONAL CANCER

3.1 *Cancer caused by the following agents*

3.1.1 Asbestos

- 3.1.2 Benzidine and its salts
 - 3.1.3 Bis chloromethyl ether (BCME)
 - 3.1.4 Chromium and chromium compounds
 - 3.1.5 Coal tars, coal tar pitches or soots
 - 3.1.6 Beta-naphthylamine
 - 3.1.7 Vinyl chloride
 - 3.1.8 Benzene or its toxic homologues
 - 3.1.9 Toxic nitro and amino-derivatives of benzene or its homologues
 - 3.1.10 Ionizing radiations
 - 3.1.11 Tar, pitch, bitumen, mineral oil, anthracene, or the compounds, products or residues of these substances
 - 3.1.12 Coke oven emissions
 - 3.1.13 Compounds of nickel
 - 3.1.14 Wood dust
 - 3.1.15 Cancer caused by any other agents not mentioned in the preceding items
- 3.1.1 to 3.1.14, where a direct link between the exposure of a employee to this agent and the cancer suffered is established

4. OTHER DISEASES

- 4.1 *Miners' nystagmus*

Passed in the House of Assembly this day of 2016.

Clerk of the House of Assembly

Working Draft

OBJECTS AND REASONS

The object of this Bill is to provide for the safety, health and welfare of persons at work.

Hon.
Minister of

Working Draft