

Republic of Kiribati

(No. of 2015)



I assent
Audo Ture
Beretitenti
24 December, 2015

An Act

entitled

AN ACT TO PROMOTE AND IMPROVE STANDARDS FOR OCCUPATIONAL HEALTH, SAFETY AND WELFARE

MADE by the Maneaba ni Maungatabu and assented to by the Beretitenti

PART 1 PRELIMINARY

Short title

1. This Act may be cited as the Occupational Health and Safety Act 2015.

Interpretation

2. (1) In this Act unless the context otherwise requires-

“employee” means a person employed under a contract of employment or under a contract of training and includes a person employed on a salary, wages or other form of remuneration including piecework rates of pay;

“employer” means a person-

- (a) who employs one or more other persons under contracts of employment or contracts of training; or
- (b) who has the management and control of a workplace;

“hazard” means the inherent properties of a substance, agent or situation at a workplace that is reasonably likely to cause harm or damage to humans, other organisms, or the environment in the absence of its control;

“independent contractor” means a person engaged by another person not under a contract of employment to do work for remuneration;

“plant” means any machinery, equipment, appliance, implement or tool and includes any component and anything fitted, connected or appurtenant to the machinery, equipment, appliance, implement or tool;

“practicable” means practicable having regard to-

- (a) the severity of the hazard or risk in question;
- (b) the state of knowledge about the hazard or risk and the ways of removing or mitigating that hazard or risk;
- (c) the availability and suitability of ways to remove or mitigate that hazard or risk;
- (d) the cost of removing or mitigating that hazard or risk; and
- (e) over time, the risk should be progressively addressed, even if resources to fully address the risk are not immediately available

“serious harm” means-

- (a) death;
- (b) amputation of a limb or part of a limb
- (c) fracture of any bone;
- (d) loss or partial loss of the use of any part of a person's body;
- (e) loss of a bodily function;
- (f) loss of consciousness;
- (g) electrical shock;
- (h) spinal injury;
- (i) being admitted as a patient to a hospital;
- (j) showing acute symptoms of exposure to any substance at the workplace;
- (k) decompression illness related to diving; or
- (j) any other serious bodily injury.

“significant hazard” means a hazard that is an actual or potential cause or source of serious harm;

“substance” means any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour;

“supply” in relation to any plant or substance, includes supply and resupply by way of sale, exchange, lease, hire or hire-purchase, whether as principal or as agent;

“risk” means the probability that the hazard may cause harm to the person exposed to the hazard.

“workplace” means any place, whether or not in a building or structure, where employees or self-employed persons work.

Republic to be bound

3. This Act binds the Republic.

Objects of this Act

4. The Objects of this Act are-
- (a) to secure the health, safety and welfare of persons at work;
 - (b) to protect persons at work against risks to health and safety;
 - (c) to assist in securing safe and healthy work environments;
 - (d) to eliminate as far as practicable risks to the health, safety and welfare of persons at work; and
 - (e) to provide for the involvement of employees and employers in the formulation and implementation of health and safety standards at workplaces.

Application of this Act

5. (1) This Act applies to all workplaces, except where a person is employed by his or her own immediate family, in -
- (a) constructing, repairing or modifying the family's house, chattels or vehicles; or
 - (b) growing, harvesting, catching, fishing or otherwise providing food for the family's consumption;
- Provided that no other person is engaged or employed to carry out such tasks; whether or not for pecuniary gain or exchange of any kind.
- (2) Compliance with the provisions of this Act does not confer any relief or exemption from liability under any other Act but no person shall be convicted of any offence under this Act in respect of the same matter for which he has been convicted of an offence under any other Act

Effect on contracts of employment, contracts of training and conditions of service

6. A term or condition of a contract of employment, contract of training or condition of service which is inconsistent with this Act shall be void.

Exemptions

7. (1) The Minister may in writing and subject to any conditions as the Minister may specify, exempt a person from any requirement of this Act, if the Minister is satisfied that compliance with the Act is not immediately practicable and for the purpose of allowing that person additional time to fully comply with this Act.
- (2) Before granting an exemption, the Minister may consult with a relevant health and safety representative and health and safety committee.
- (3) An exemption shall be current for up to 2 years as specified by the Minister or, if no such period is specified, for one year from the date on which it was granted.
- (4) If the Minister imposes a condition to an exemption, the person shall comply with that condition.
- (5) A person who fails to comply with a condition to an exemption commits an offence.

PART II ADMINISTRATION

Appointment of inspectors and certificates of appointment

8. (1) Subject to section 99 of the Constitution, the Beretitenti may appoint an officer to be an inspector for the purposes of this Act.
- (2) The Minister shall furnish every inspector with a certificate of appointment as conclusive proof of the inspector's appointment.
- (3) An inspector shall produce the certificate of appointment to an employer or employee on request.
- (4) An inspector shall report to the Secretary of the Ministry responsible for the administration of this Act on request, regarding the exercise of his or her powers and functions under this Act.
- (5) A person who forges or counterfeits a certificate of appointment or impersonates an inspector commits an offence.

Duties and powers of inspectors

9. (1) An inspector shall -
 - (a) facilitate the implementation of this Act by providing information, advice and guidance to employers and employees; and
 - (b) investigate any suspected offences committed against this Act and where appropriate, initiate legal action for the breach.
- (2) An inspector may, for the purpose of the execution of this Act-
 - (a) enter any place at all reasonable hours by day and night when there is a reasonable cause to believe that any person is employed in that place;
 - (b) make such inspections, examinations, tests and inquiries, and take such samples and photographs as are necessary to ascertain whether the provisions of this Act have been or are being complied with; and where any such sample is taken the inspector concerned shall, if so requested, deliver part of it to the employer concerned;
 - (c) require the production of any wage record of any book, notice, record, list or other document required by this Act, to be kept or exhibited by the employer and inspect, examine and copy or take notes from it;
 - (d) question alone or in the presence of any other person, the employer or any person who is, or has been employed in the place;
 - (e) require any process or method of work to be stopped immediately if the process or method of work poses an immediate danger to the safety or health of any person;
 - (f) be accompanied by a member of the police force or any other officer of the Public Service qualified to assist with the execution of any duty under this Act, where thought necessary by the inspector;

- (g) after making due inquiries, an offence has been or is likely to be committed, report the matter to the police for investigation; and
 - (h) exercise such other powers and authorities as may be necessary to carry this Act into effect; and
- (3) Except for the purposes of this Act and his or her exercising of the functions under this Act, an inspector shall not disclose to any person any information acquired in the course of the exercise of those functions unless directed to do so by the Minister or a Court.
- (4) Subject to any prescribed exceptions an inspector -
- (a) shall not have any direct interest in any business under that inspector's supervision;
 - (b) shall declare to the Minister his or her indirect interest in any business under that inspector's supervision; and
 - (c) shall treat as confidential the source of any complaint relating to a defect or breach of this Act and shall not reveal to any employer or employer's representative that action was taken as a result of such a complaint unless the complainant agrees to the release of the information.
- (5) An inspector who fails to comply with this section commits an offence.

Employer to allow entry and inspection

10. (1) An employer and an employer's agent or representative shall at all times provide the means required by an inspector for any entry, inspection, examination inquiry, or the exercise of any other power under this Act in relation to the employer's place of business.
- (2) Any person who obstructs an inspector or prevents an inspector from carrying out his or her duties under this Act, or in any way fails to comply with this section commits an offence

Liability of inspectors and the Republic

11. (1) An inspector, health and safety representative, or member of a health and safety committee, while acting in that position shall not be liable for any act done or omitted by that person-
- (a) in good faith; and
 - (b) in pursuance or intended pursuance of the provisions of this Act.
- (2) The Republic shall not be liable for any act or omission on the part of an inspector or any officer in relation to the performance of his or her duties or functions under this Act.

PART III GENERAL HEALTH AND SAFETY PROVISIONS

Duties of employers

12. (1) An employer shall provide and maintain, so far as practicable, a working environment for employees and site visitors that is safe and without risks to health.

- (2) Without in any way limiting the generality of subsection (1), an employer contravenes that sub-section if the employer fails to -
- (a) identify existing and new hazards at work and assess each identified hazard to determine whether or not it is a significant hazard to any employee and site visitor at work; and
 - (b) do the following to reduce the hazards and risks of each significant hazard found at the workplace-
 - (i) take steps as far as is practicable to eliminate each significant hazard from the workplace;
 - (ii) if the hazard remains significant, takes steps as far as is practicable to minimise the hazard;
 - (iii) if the hazard remains significant, take steps as far as is practicable to isolate that hazard from employees at the workplace; and
 - (iv) if, a hazard remains significant, introduce a system to control each employee's exposure to the hazard and provide relevant protective clothing and equipment to protect employees from any harm that might arise from that hazard;
 - (c) provide such information, instruction, training and supervision as is necessary, and to which the employee is entitled to, to enable employees to perform their work in a manner that is safe and without risks to health; and
 - (d) as far as is practicable -
 - (i) monitor the health and safety conditions at the workplace;
 - (ii) monitor the health of the employees at the workplace;
 - (iii) keep information and records relating to the health and safety of employees at the workplace; and
 - (iv) provide the results of any health monitoring of an employee to that employee.
- (3) For the purposes of subsection (1) and (2) -
- (a) “employee” includes an independent contractor engaged by an employer and any employees of the independent contractor;
 - (b) “site visitors” means persons who are not employees of the employer and have a legitimate purpose to be at the workplaces; and
 - (c) the duties of an employer under those sub-sections extend to such an independent contractor and the independent contractor's employees in relation to matters over which the employer -
 - (i) has control; or
 - (ii) would have had control but for any agreement between the employer and the independent contractor to the contrary.
- (4) An employer shall not require an employee to pay, whether in cash or kind, for any plant, systems, arrangements, facilities, equipment, information, instruction, training or supervision provided and maintained at a workplace under this Act.
- (5) An employer who fails to comply with this section commits an offence.

Duties of designers, manufacturers and suppliers of plant or substances

13. (1) A person who designs, manufactures or supplies any plant or substance for use at a workplace shall -
- (a) ensure so far as is practicable that the plant or substance is so designed and manufactured to be safe and without risks to the health or safety of employees when used properly and in accordance with relevant information and instructions provided by the designer, manufacturer or supplier; and
 - (b) take such steps as are practicable to provide adequate information and instructions to purchasers and users about the use for which each plant or substance has been designed, its correct installation and any requirements necessary to ensure that it will be safe and without risks to health when properly used.
- (2) A person who fails to comply with this section commits an offence.

Duties of employees

14. (1) While at work, an employee shall -
- (a) take reasonable care for his or her own health and safety and for the health and safety of any other employee who may be affected by his or her acts or omissions at the workplace; and
 - (b) co-operate with his or her employer with respect to any action taken by the employer to comply with any requirement imposed by or under this Act.
- (2) An employee shall not -
- (a) wilfully or recklessly interfere with or misuse anything provided in the interests of health and safety or welfare at the workplace; or
 - (b) wilfully place at risk the health or safety of any person at the workplace.
- (3) An employee who fails to comply with this section commits an offence.

Duties of site visitors

15. (1) While at a workplace, a site visitor shall -
- (a) take reasonable care for his or her own health and safety and for the health and safety of any other person who may be affected by his or her acts or omissions at the workplace; and
 - (b) co-operate with the employer at the workplace with respect to any action taken by the employer to comply with any requirement imposed by or under this Act.
- (2) A site visitor shall not -
- (a) wilfully or recklessly interfere with or misuse anything provided in the interests of health and safety or welfare at the workplace; or
 - (b) wilfully place at risk the health or safety of any person at the workplace.
- (3) A site visitor who fails to comply with this section commits an offence.

Compliance with regulations is compliance with Part III

16. Where the regulations makes provision for or in relation to any duty, obligation, act, matter or thing to which this Part applies, a person who complies with the regulations in relation to that duty, obligation, act, matter or thing shall be deemed to have complied with this part in relation to that duty, obligation, act, matter or thing.

PART IV

CONSULTATION AND THE RESOLUTION OF HEALTH AND SAFETY ISSUES

Health and safety representative

17. (1) The employees at a work workplace may elect to be represented by one or more health and safety representative.
- (2) Where the workplace consists of more than 25 employees, a health and safety committee must be established.
- (3) The role of a health and safety representative is -
- (a) to promote, on behalf of the employees, consultation on health and safety issues and participate in the resolution of health and safety issues that may arise with the employer; and
 - (b) to perform any other functions as agreed in writing between the employer and the employees at the workplace.
- (4) The employees at the workplace shall determine the method of electing a health and safety representative, but if the employees cannot agree on the method of electing a health and safety representative, an employee at the workplace may request an inspector to attend and provide advice on the matter.
- (5) A health and safety representative shall perform a function of duty under this Act only in respect of the workplace or part of the workplace from which the representative is elected.
- (6) A person ceases to be a health and safety representative upon -
- (a) ceasing to be an employee at the workplace;
 - (b) resigning as a health and safety representative; or
 - (c) failing to be re-elected.
- (7) No provision of this Act or the regulation shall be construed as imposing any duty upon a health and safety representative in his or her capacity as health and safety representative.

Health and safety committee

18. (1) The employer and employees at a workplace may appoint a health and safety committee.

- (2) The role of a health and safety committee is-
 - (a) to promote health and safety at the workplace through the formulation of health and safety policies and procedures at the workplace; and
 - (b) to perform any other functions as agreed in writing between the employer and employees at the workplace.
- (3) The method of appointment, composition, meeting arrangements and meeting procedures of a health and safety committee shall be agreed by the employer and the employees at the workplace.
- (4) If there is disagreement about the method of appointment of the health and safety committee, the employer or an employee at the workplace may request an inspector to attend and to provide advice on the matter.

Resolution of health and safety issues

19. If an issue concerning the health and safety arises at a workplace -
- (a) the employer or a representative of the employer; and
 - (b) the health and safety representative or, if there is no such representative, an employee at the workplace-
- shall attempt to resolve the issue together and may agree to refer the issue to a health and safety committee (if any) at the workplace or to an inspector.

Right of employee to remove himself from risky situations

20. An employee has the right to remove himself from a work situation which he has reasonable justification to believe presents an imminent risk of serious harm.

Discrimination against employee or prospective employee

21. (1) An employer shall not dismiss an employee, injure an employee in the employment of the employer or alter the position of an employee to the detriment of the employee by reason only that the employee -
- (a) performs or has performed any function or duty as a health and safety representative or as a member of a health and safety committee;
 - (b) assists or has assisted or gives or has given any information to an inspector, health and safety representative or health and safety committee;
 - (c) makes or has made a complainant in relation to health and safety to the employer, a fellow employee, inspector, health and safety representative or health and safety committee; or
 - (d) refuses to work in risky situation with reasonable justifications to believe that it presents an imminent risk of serious harm.
- (2) An employer or prospective employer shall not refuse or deliberately omit to offer employment to a prospective employee or treat a prospective employee less favourably than another prospective employee would be treated in relation to the terms on which employment is offered by reason only that the first-mentioned prospective employee -
- (a) has been a health and safety representative or as a member of a health and safety committee;

- (b) has performed any function or duty as such a representative or member;
 - (c) has assisted or given any information to an inspector, health and safety representative or health and safety committee; or
 - (d) has made a complaint in relation to health and safety to former employer, a former fellow employee, inspector, health and safety representative or health and safety committee.
- (3) A person who fails to comply with this section commits an offence.
- (4) In proceedings for an offence against this section, if all the facts constituting the offence other than the reason for the defendant's act are proved, the onus of the proving that the act of discrimination was actuated by the reason alleged in the charged shall lie on the defendant.
- (5) Where a person is convicted of an offence against this section, the court may, in addition to imposing a penalty upon the offender, make one or both of the following orders-
- (a) the offender to pay within a specified period to the person against whom the offender discriminated such damages as it thinks fit to compensate that person;
 - (b) the employee be reinstated or re-employed in the employee's former position or that the prospective employee to employed in the position for which the prospective employee had applied or similar position.

PART V ACCIDENT RECORDING AND INVESTIGATION

Notice of accident

22. (1) An employer shall ensure that the Secretary of the Ministry responsible for the administration of this Act is immediately notified of an accident at a workplace under his or her management that resulted in serious harm.
- (2) An employer who fails to comply with this section commits an offence.

Accident records

23. (1) An employer shall provide a written record of the accident referred to in section 22 to the Secretary of the Ministry responsible for the administration of this Act within 5 days of the employer becoming aware of the incident.
- (2) The record shall include the following information-
- (a) the name and address of the employer;
 - (b) details of the deceased or injured person or persons, including name, age, sex, residential address, occupation;
 - (c) the time and date of the accident;
 - (d) the location where the accident occurred;
 - (e) the work being undertaken at the time of the accident;
 - (f) a brief description of the accident;
 - (g) the name of the persons who saw the accident or who first came on the scene; and

- (h) the action taken or intended to be taken to prevent a recurrence of the accident.
- (3) The employer shall ensure that the record is made available for inspection by -
 - (a) an inspector;
 - (b) a health and safety representative, if any, at the workplace;
 - (c) the health and safety committee, if any, at the workplace; and
 - (d) the injured person or if deceased, that person's representative.
- (4) The employer shall ensure that a copy of the record is kept for at least 5 years.
- (5) An employer who fails to comply with this section commits an offence.

Accident investigation and site preservation

- 24. (1) If an accident at a workplace resulted in the death of any person, the employer shall ensure that the site of the accident is not disturbed until -
 - (a) an inspector arrives at the site of the accident; or
 - (b) an inspector directs otherwise at the time of the notification.
- (2) Sub-section (1) does not apply if the disturbance to the site is for the purpose of -
 - (a) protecting the health and safety of any person;
 - (b) aiding an injured person involved in an accident; or
 - (c) taking essential action to make the site safe or to prevent a further occurrence of an accident.
- (3) An employer who fails to comply with sub-section (1) commits an offence.

PART VI IMPROVEMENT AND PROHIBITION NOTICES

Inspector may issue improvement notice

- 25. (1) Where an inspector is of the opinion that any person-
 - (a) is contravening any provision of this Act or the regulations; or
 - (b) is likely to contravene such a provision;the inspector may issue to the person an improvement notice requiring the person to remedy the contravention or likely contravention or the matters or activities occasioning the contravention or likely contravention.
- (2) An improvement notice shall -
 - (a) state that the inspector is of the opinion that the person -
 - (i) is contravening any provision of this Act or the regulations; or
 - (ii) is likely to contravene such a provision;
 - (b) state the reasons for that opinion;
 - (c) specify the provision in this Act or the regulations in respect of which that opinion is held;

- (d) specify the day (being a day more than seven days after the day on which the notice was issued) before which the person is required to remedy the contravention or likely contravention or the matters or activities occasioning the contravention or likely contravention; and
 - (e) inform the person to whom it is issued of the rights of review and appeal in relation to the notice.
- (3) A person -
- (a) to whom a improvement notice is issued in relation to which a review has not been made under section 29 or an appeal has not been made under section 30; and
 - (b) who does not comply with the improvement notice;
- commits an offence.

Inspector may issue prohibition notice

26. (1) Where an inspector is of the opinion that at a workplace there is occurring or may occur any activity which involves or will involve an immediate risk to the health and safety of any person, the inspector may issue to the person who has or may reasonably be presumed to have control over the activity a prohibition notice prohibiting the carrying out of the activity until an inspector certifies in writing that the matters which give or will give rise to the risk are remedied.
- (2) A prohibition notice shall -
- (a) state that the inspector is of the opinion that in the workplace there is occurring or may occur an activity which involves or will involve an immediate risk to the health and safety of any person;
 - (b) state the reasons for that opinion;
 - (c) specify the activity which in the inspector's opinion involves or will involve the risk and the matters which give or will give rise to the risk;
 - (d) where in the inspector's opinion the activity involves a contravention or likely contravention of any provision of this Act or the regulations, specify that provision and state the reasons for that opinion; and
 - (e) inform the person to whom it is issued of the rights of review and appeal in relation to the Notice.
- (3) A person -
- (a) to whom a prohibition notice is issued in relation to which a review has not been made under section 29 or an appeal has not been made under section 30; and
 - (b) who does not comply with the prohibition notice;
- commits an offence.

Notices may include directions

27. (1) An inspector may include in an improvement notice or a prohibition notice directions about the measures to be taken to remedy any contravention, risk, matter of activities to which the notice relates.

- (2) A direction under sub-section (1) may -
 - (a) refer to an approved Code of practice; and
 - (b) offer the person to whom it is issued a choice of ways in which to remedy the contravention, likely contravention, risk, matters or activities.

Notice to be displayed

- 28. (1) A person to whom an improvement notice or a prohibition is issued shall immediately display the notice in a prominent place at or near the workplace of activity affected by the notice.
- (2) Sub-section (1) does not apply to an improvement notice that is subject to review or appeal under this Act.
- (3) A person who fails to comply with sub-section (1) commits an offence.

Review by Minister

- 29. (1) A person issued with an improvement notice or a prohibition notice by an inspector may, within seven days of the date of issue of the notice, apply to the Secretary for a review of that notice.
- (2) The Secretary shall inquire into the circumstances relating to the notice and may -
 - (a) affirm the notice;
 - (b) affirm the notice with such modifications as he or she thinks fit; or
 - (c) cancel the notice.
- (3) Pending the decision of the Secretary under sub-section (2), the operation of the notice shall-
 - (a) in the case of an improvement notice, be suspended; and
 - (b) in the case of a prohibition notice, continue, subject to any decision to the contrary made by the Secretary.
- (4) Where -
 - (a) the Secretary affirms an improvement notice or a prohibition notice or affirms such a notice with modifications; and
 - (b) the person to whom the improvement notice or prohibition notice was issued does not comply with the notice as so affirmed;that person commits an offence.

Appeal against review

- 30. (1) A person issued with an improvement notice or a prohibition notice which has been subject to review under section 29 may, within 30 days of the date of the service of the Secretary's decision, appeal to the High Court against the Secretary's decision
- (2) The court shall inquire into the circumstances relating to the notice and may -
 - (a) affirm the notice;
 - (b) affirm the notice with such modifications as it thinks fit; or

- (c) cancel the notice.
- (3) Pending the decision of the court under sub-section (2), the operation of the notice shall-
 - (a) in the case of an improvement notice, be suspended; and
 - (b) in the case of a prohibition notice, continue, subject to any decision to the contrary made by the Court.
- (4) Where-
 - (a) the Court affirms an improvement notice or a prohibition notice or affirms such a notice with modifications; and
 - (b) the person to whom the improvement notice or prohibition notice was issued does not comply with the notice as so affirmed-
that person commits an offence.

PART VII HEALTH AND SAFETY STANDARDS

Codes of Practice

- 31. (1) For the purpose of providing practical guidance to any person who may be placed under an obligation by or under this Act, the Minister may approve a code of practice.
- (2) A code of practice may consist of any code, standard, rule, specification or provision relating to the occupational health and safety and may apply incorporate or refer to any document formulated or published by any body or authority as in force at the time the code of practice is approved or has mended formulated or published from time to time.
- (3) The Minister may approve any code of practice if
 - (a) not less than one month has elapsed since the publication of a draft of the code of practice; and
 - (b) the Minister has consulted such persons who may be affected by the code of practice, or representatives of those persons, and they have had the opportunity to consider its possible effects and make comment and submissions to the Minister; and
 - (c) the Minister has considered any comments or submissions submitted on the matter.
- (4) A code of practice shall come into operation and effect when a copy signed by the Minister is published by exhibition at the Public Office of the Beretitenti.

Use of Codes of practice in proceedings

- 32. Where in any proceedings under this Act it is alleged that a person contravened or failed to comply with a provision of this Act or the regulations in relation to which an approved code of practice was in effect at the time of the alleged contravention or failure-
 - (a) the approved code of practice shall be admissible in evidence in those proceedings; and

- (b) if the court is satisfied in relation to any matter which it is necessary for the prosecution to prove in order to establish the alleged contravention or failure that-
 - (i) any provisions of the approved code of practice is relevant to that matter; and
 - (ii) the person failed at any material time to observe that provision of the approved code of practice-

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

Regulations

- 33. (1) The Beretitenti, acting in accordance with the advice of Cabinet may make regulations for or with respect to the safety, health and welfare of persons in the workplaces.
- (2) Without in any way limiting the generality of sub-section (1), regulations may be made for the purposes of that sub-section for or with respect to any of the following matters:-
 - (a) regulating or prohibiting -
 - (a) the manufacture, supply or use of plant;
 - (b) the manufacture, supply, storage, transport or use of any substances; or
 - (c) the carrying on of any process or the carrying out of any operation;
 - (b) regulating the design, guarding, sitting, construction, installation, bringing into operation, examination, repair, maintenance, alteration, adjustment, dismantling or testing of any plant;
 - (c) requiring the employers or other prescribed persons at such times and in such manner as are prescribed to examine, test, dismantle, repair, alter or adjust any plant;
 - (d) regulating the examination, testing, analysis, labelling or marking of any substance;
 - (e) requiring employers or other prescribed persons at such times and in such manner as are prescribed to examine, test, analysis, label or mark any substance;
 - (f) regulating the sitting examination, repair, alteration, adjustment, dismantling, maintenance, care or use of and conditions at any workplace;
 - (g) inspections by inspectors;
 - (h) requiring any plant, substance or workplace to be registered or licensed by the authority or by any other prescribed person or body of persons;
 - (i) prohibiting the use of any plant, substances or workplace unless it is registered or licensed;
 - (j) prescribing the persons who may apply for registration of or any licence in respect of any plant, substance or workplace;
 - (k) prescribing the terms and conditions of registration of any plant, substance or workplace or of any licence in respect of any plant, substance or workplace;
 - (l) prescribing the circumstances in which registration of or any licence in respect of plant, substance or workplace may be cancelled or suspended;
 - (m) providing for the variation of the terms and conditions of registration of or any licence in respect of any plant, substance or workplace;

- (n) prescribing the manner of application for the granting, renewal or transfer of registration of or any licence in respect of any plant, substance or workplace;
- (o) prohibiting the carrying on of prescribed activities at the workplace or the performance of prescribed work at workplaces except under the supervision of or by persons with prescribed qualifications or experience;
- (p) requiring in prescribed circumstances employers to employ or appoint persons, whether or not persons with prescribed qualifications or experience, to perform prescribed functions and imposing duties or conferring powers on such persons;
- (q) regulating or prohibiting the employment in prescribed activities or work of all persons or any class of persons;
- (r) regulating or requiring the instruction, training and supervision of persons at work;
- (s) requiring employers to bring to the notice of their employees such of the provisions of this Act or the regulations as are prescribed;
- (t) regulating or requiring the taking of any action or precautions to avoid, or in the event of, any accident or dangerous occurrence;
- (u) prohibiting or requiring the taking of any action the event of any accident or dangerous occurrence;
- (v) regulating or requiring in prescribed circumstance the provision and use of protective clothing or equipment and rescue equipment;
- (w) prescribing standards in relation to the use of, including standards of exposure to, any physical, biological, chemical or psychological hazard;
- (x) regulating or requiring the monitoring by employers of conditions at any workplace;
- (y) regulating or requiring the monitoring by employers of the health of their employees;
- (z) regulating or requiring the provision by employers of prescribed facilities for the welfare of persons at the workplace;
- (za) requiring the keeping and preservation by employers or other prescribed persons of records of prescribed activities, matters or things;
- (zb) requiring notice to be given of prescribed activities, matters or things to the Minister, an inspector or other prescribed person;
- (zc) prescribing the fee chargeable or payable for doing any act or providing any service for the purposes of the regulations and prescribing the person or person or body of persons to which the fees are payable and providing for the distribution of those fees and for the refund of those fee in prescribed circumstances;
- (zd) prescribing forms for the purposes of this Act and the regulations;
- (ze) providing for contravention of or failure to comply with a provision of a regulation to be an offence;
- (zf) prescribing penalties for any contravention of or failure to comply with the regulations not exceeding the penalties set out in section 34;
- (zg) prescribing the responsibilities of an employer for the health and safety of an independent contractor over which the employer -
 - (a) has control; or
 - (b) would have control but for any agreement between the employer and the independent contractor to the contrary; and
- (zh) prescribing any matter of thing, which by this Act is required or permitted to be prescribed for the purpose of this Act.

- (3) Any regulations made under this section may -
- (a) be general or restricted in operation as to time, place, persons or circumstances whether any such time, place, person or circumstance is determined or ascertainable before at or after the making of the regulations;
 - (b) incorporate, adopt apply or make prescriptions by reference to, with or with modification, any documents formulated or published by any body or authority as in force at the time the regulation is made or as amended formulated or published from time to time;
 - (c) make different prescriptions or impose different requirement in respect of different classes, sub-classes or kinds of plant, substances, workplaces, activities, work, persons or circumstances;
 - (d) leave any matter or thing to be from time to time determined applied or approved by the Minister, an inspector or any other prescribed person or body of persons;
 - (e) provide that the Minister may grant exemptions in respect of any requirement of or prohibition in the regulations upon such terms and conditions as are prescribed; and
 - (f) confer powers or impose duties in connection with the regulations on an inspector, any government department, any public authority, the council or any other prescribed person or body of persons.

PART VIII LEGAL PROCEEDINGS

Penalties

34. A person who commits an offence against this Act is liable to a penalty-
- (a) in the case of a body corporate to a fine of \$5000; and
 - (b) in any other case to a fine of \$2,000 or imprisonment of 1 year or both.

Offences by bodies corporate

35. (1) Where an offence against this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to have attributable to any wilful neglect on the part of, an officer of the body corporate or person purporting to act as such an officer; that officer or person is also guilty of that offence and liable to the penalty for that offence.
- (2) Where in any proceedings under this Act it is necessary to establish the intention of a body corporate it is sufficient to show that a servant or agent of the body corporate had that intention.
- (3) In subsection (1) "officer" in relation to a body corporate means-
- (a) a director, secretary or executive officer of the body corporate;
 - (b) any person in accordance with whose directions or instructions the directors of the body corporate are accustomed to act; or
 - (c) a person concerned in the management of the body corporate.

Power to order contravention remedied

36. (1) In any proceedings against an employer in respect of non-compliance with any requirement under this Act or regulations, the Court, in addition to or instead of imposing a fine, may by order, require the defendant to do specified work, or to adopt specified means for preventing the further non-compliance with that requirement and shall specify a time within which that order is to be obeyed.
- (2) Where a Court makes an order under sub-section (1) the Court may adjourn the proceedings until after the time specified in the order for compliance.

Provisions as to certain evidence

37. In any proceeding for an offence against this Act-
- (a) it shall be sufficient to allege that any building structure, ship, boat, site or place is a workplace within the meaning of this Act without further allegation;
 - (b) it shall be sufficient to state the name of the ostensible employer at any workplace or the name or title by which the employer is usually known; and
 - (c) where the age of any person is material and there is insufficient evidence of the actual age of the person, the court may have regard to the apparent age of the person.

Recovery of expenses

38. If during the administration of this Act the Republic is required -
- (a) to pay, while carrying out any inspection, investigation or inquiry, for any test, evaluation, report, hire of equipment;
 - (b) to clean up an industrial spillage or environmental contamination, dispose of industrial waste, hazardous substances or materials or undertake or have undertaken similar work; or
 - (c) to pay for special transport fares for its Officers, internal or off-shore, outside their normal duties and transport cost, or the cost of providing internal or off-shore transport for injured workers or medical costs of any description for the care of injured workers;
- such costs shall be deemed to be a civil debt owed to the Republic.

Disclosure of information

39. (1) The Minister may require a person to whom this Act applies to provide such information as is reasonably necessary to enable the purpose of this Act to be carried out.
- (2) For the purpose of obtaining such information the Minister may issue a notice in writing requiring that person to produce the information specified in the notice and in such form and manner and within such time as specified.

EXPLANATORY MEMORANDUM

Promoting and improving the standards for occupational health safety and welfare is crucial to ensuring that the employees are safe and are well protected from potential risks and hazards present or likely to be present at their work places, and insures the employer from potential liabilities for injuries or death resulting or likely to result from such risks and hazards. The modern approach to occupational safety and health as reflected in the 3 Conventions, namely the Occupational Safety and Health Convention 1981, the 2002 Protocol on Occupational Safety and Health, and the Promotional Framework for Occupational Safety and Health Convention 2008, is based on the premise that improvement of safety and health in the work place call for the establishment and maintenance of a preventative safety and health culture in the society at large. As provided in Article 1 (d) of the Promotional Framework for Occupational Safety and Health Convention 2006, such a culture is defined.

"as a culture in which the right to a safe and healthy working environment is respected at all levels, where government, employers and workers actively participate in securing a safe and healthy working environment through a system of defined rights, responsibilities and where the principle of prevention is accorded the highest priority".

This Act intends to achieve the intended purposes inherent in the Conventions already referred to. Whilst it is acknowledged that the cost of achieving the intended objectives of this Act may be burdensome upon the employer, it is accepted that the health, safety and welfare of an employee is paramount for a working place to effectively function.

This Act is divided into 8 parts made up of 39 sections.

Part 1 contains preliminary matters. Section 2 defines certain terms, the more important ones are "hazard", "serious harm", and "risk" that relates to health and safety at work. Section 3 makes the Act binding on the Republic. While the Act at section 5 applies the Act to all workplaces, it makes exception to a self-employed or family - owned business involving constructing, repairing or modifying the family house, chattels, or vehicles or grouping, harvesting, catching, fishing or otherwise provide food for the family (s) consumption. The other exemptions can be made by the Minister in writing with or without conditions under section 7, for a period of up to 2 years.

Part II deals with the administration of the Act. Section 8 provides for the appointment of inspectors, the people in enforcing, checking and monitoring safety and health standards present at work sites. They are empowered under section 9 to do everything they can to ensure that the employees are treated reasonably, fairly and safe from potential hazards, serious harm and risks likely to occur on the work sites. Section 10 allows the inspector to enter and inspect the employer's records and work sites. Section 11 protects the inspectors from liabilities for their actions, if they act in good faith and in pursuance the provisions of the Act. But it does not make the Republic liable for their performance of their duties.

Part III outlines the General Health and Safety Provisions. Section 12 emphasises that an employer must provide and maintain a working environment for employees and site visitors that is safe and without risks to health. It then outlines example of certain duties of employers relating to the health and safety of employees and the site visitors at subsections (2) (a) to (d). The section also criminalises any failure under the Act. Section 13 deals specifically with the duties of designers, manufacturers and suppliers of plant or substances to provide a safe and risks free environment at work sites. Failure on

the part of an employer is a criminal offence. Section 14 and 15 enumerate duties on the part of an employee and a site visitor at the work place. Failure to observe those is committing a criminal offence on the part of both an employee and a site visitor.

Part IV addresses how to resolve health and safety issues through consultation. This is done by appointing a health and safety representative by the employees whose role is defined under section 17, and who acts as a conduit between his or her fellow employees and the employer or employers on matters relating to health and safety of the employees at work sites. The inspector can assist where the employees cannot agree as to how to elect a health and safety representative. Section 18 establishes the Health and Safety Committee, the role of which is to promote health and safety at the workplace through the formulation of health and safety policies and procedures at the workplace. Any health and safety issues must be resolved by the Health and Safety Committee or be referred to an inspector. Section 21 prohibits discrimination against employees or prospective employees and any one breaching this section is liable for prosecution, and the court may award an employee affected restitution or reinstate him/her.

Part V states how accidents are recorded and how investigations are carried out. Section 22 imposes a duty on an employer to report an accident occurring at his workplace. Section 23 defines the details of the accident records. Section 24 does not allow the disturbance on the workplace where the accident occurs for the investigation to be properly carried out.

Part VI elaborates on how to remedy contravention of the Act or regulations. This is achieved by the inspector issuing an improvement notice under section 25 requiring the person contravening this Act to remedy those contraventions. A person not complying with the improvement notice commits an offence. But where there occurs an immediate risk to the health and safety of any person on the work site, the inspector may issue a prohibition notice under section 26 prohibiting the carrying out of the activity until the inspector certifies in writing that the matters which give or will give rise to the risks are remedied. The two notices, improvement notice and prohibition notice may include directions under section 27 by the inspector about the measures to be taken to remedy any contravention, risk, matter of activities to which the notice relates. The two notices if addressed to the person to whom an improvement or prohibition notice is directed under section 28 must display those notices in a prominent place at or near the workplace of activity affected by the notice. A person issued with an improvement notice or a prohibition notice may under section 29 apply to the Secretary for a review of the notice, who can affirm the notice with modification as the Secretary thinks fit or cancel the notice. A person issued with either an improvement or a prohibition notice which has been subject to review under section 29 may, within 30 days of the date of the service of the Secretary's decision, appeal to the High Court under section 30, against the Secretary's decisions. The court may affirm the notice with modifications as the court thinks fit or cancel the notice. If the person to whom the improvement notice or prohibition notice was issued does not comply with the notice as so affirmed by the Secretary upon review under section 29 or by the Court on appeal under section 30 commits an offence.

Part VII deals with Health and Safety Standards. Section 31 empowers the Minister to approve a code of practice to provide practical guidance to any person who may be placed under an obligation under this Act. That Code of practices can be used under section 32 in court proceedings to prove the contravention of such Code. Section 33 empowers the Beretitenti, acting in accordance with the advice of the Cabinet, to make regulations for or with respect to those matters therein relating to the safety, health and welfare of persons in the workplaces.

Part VIII set out legal proceedings matters. Section 34 is a penalty provision setting out fines for the

commission of offences under the Act. Section 35 deals specifically for offences committed by bodies corporate. Section 36 empowers the Court to order instead of a fine, specific work or specific means for presenting further non-compliance within a time specified. Section 37 provides for certain evidential matters. Section 38 clarifies that certain expenses relating to the administration of this Act are deemed as a civil debt owed to the Republic. Section 39 empowers the Minister to require any person provide information as is reasonably necessary to enable the purpose of this Act to be carried out.

Titabu Tabane
Attorney General

CERTIFICATE OF THE CLERK OF THE MANEABA NI MAUNGATABU

This printed impression of the Occupational Health and Safety Act 2015 has been carefully examined by me with the Bill which passed the Maneaba ni Maungatabu on the 13th August 2015 and is found by me to be a true and correctly printed copy of the said Bill.



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Eni Tekanene
Clerk of the Maneaba ni Maungatabu

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