

A BILL

*i n t i t u l e d*

An Act to amend the Occupational Safety and Health Act 1994.

[ ]

**ENACTED** by the Parliament of Malaysia as follows:

**Short title and commencement**

1. (1) This Act may be cited as the Occupational Safety and Health (Amendment) Act 2020.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

**Amendment of section 1**

2. The Occupational Safety and Health Act 1994 [*Act 514*], which is referred to as the “principal Act” in this Act, is amended in section 1—

(a) by substituting for subsection (2) the following subsection:

“(2) Subject to subsection (3), this Act shall apply to all places of work throughout Malaysia including in the public services and statutory authorities.”; and

(b) by substituting for subsection (3) the following subsection:

“(3) Nothing in this Act shall apply to the work specified in the First Schedule.”.

### **Amendment of section 3**

3. Section 3 of the principal Act is amended—

(a) in subsection (1)—

(i) by deleting the definition of “industry”;

(ii) by inserting after the definition of “self-employed person” the following definition:

‘ “serious body injury” means any injury as specified in the Fourth Schedule;’;

(iii) by inserting after the definition of “Council” the following definition:

‘ “Director General” means the Director General of Occupational Safety and Health appointed under subsection 5(1);’;

(iv) by inserting after the definition of “contract of service” the following definition:

‘ “contractor” means any person who contracts with a principal to carry out in whole or in part any work undertaken by the principal in the course of or for the purposes of the principal’s trade, business, profession or undertaking;’;

(v) by substituting for the definition of “employer” the following definition:

‘ “employer” means any person who has entered into a contract of service to employ any other person as an employee;’;

(vi) by deleting the definition of “immediate employer”;

(vii) by deleting the definition of “principal employer”;

(viii) by inserting before the definition of “occupier” the following definition:

‘ “licensed person” means a person who is granted a licence under subsection 7A(1);’;

(ix) by inserting before the definition of “contract of service” the following definition:

‘ “competent person” means a competent person registered under section 31c;’;

(x) in the definition of “self-employed person”, by substituting for the word “employment” the word “service”;

(xi) by substituting for the definition of “officer” the following definition:

‘ “officer” means the officer appointed under subsection 5(1) or (3);’;

(xii) by substituting for the definition of “employee” the following definition:

‘ “employee” means any person who has entered into a contract of service with an employer;’;

(xiii) by inserting after the definition of “prescribed” the following definition:

‘ “registered medical practitioner” means a medical practitioner registered under the Medical Act 1971 [*Act 50*];’;

(xiv) by inserting before the definition of “self-employed person” the following definition:

‘ “registered training provider” means a training provider registered under section 31c;’;

- (xv) by inserting before the definition of “competent person” as inserted in subparagraph (a)(ix) the following definition:

‘ “certificate of fitness” means a certificate issued under section 27D;’;

- (xvi) by inserting after the definition of “licensed person” as inserted in subparagraph (a)(viii) the following definition:

‘ “occupational health service” includes service for the protection of an employee’s health at work, for the promotion of health and well-being at place of work, as well as for the prevention of occupational diseases, occupational poisoning and accidents;’;

- (xvii) in the definition of “premises”, in paragraph (b), by inserting after the word “vessel” the words “, hovercraft”;

- (xviii) by inserting before the definition of “registered medical practitioner” as inserted in subparagraph (a)(xiii) the following definition:

‘ “principal” means any person who in the course of or for the purposes of his trade, business, profession or undertaking contracts with a contractor for the execution by or under the contractor of the whole or any part of any work undertaken by the principal;’;

- (xix) by deleting the definition of “secretary”; and

- (b) in subsection (2), by inserting after the words “arising out of” the words “or in connection with”.

### **Amendment of heading of Part II**

4. The heading of Part II of the principal Act is amended by inserting after the word “OFFICERS” the words “, INDEPENDENT INSPECTING BODY AND LICENSED PERSON”.

**Amendment of section 5**

**5.** The principal Act is amended by substituting for section 5 the following section:

**“Appointment of officers, etc.**

**5.** (1) The Minister shall appoint from amongst the officers in the Factory and Machinery Inspector Scheme of Service—

(a) a Director General for the purpose of exercising the powers and performing the duties assigned to him under this Act; and

(b) such numbers of Deputy Director General, Directors, Deputy Directors, Assistant Directors and other occupational safety and health officers as may be necessary for the purposes of this Act.

(2) If for any reason the Director General is unable to exercise the powers or perform the duties of his office, such powers or duties shall be exercised or performed by the Deputy Director General.

(3) The Minister may appoint any public officer from any scheme of service other than specified in subsection (1) to be an officer for all or any of the purposes of this Act as specified in the instrument of appointment.

(4) Subject to such limitations as may be prescribed, the officers appointed under paragraph (1)(b) and subsection (3) shall perform all the duties assigned, and may exercise all the powers conferred, upon the Director General under this Act, and every duty so performed and power so exercised shall be deemed to have been duly performed and exercised for the purposes of this Act.

(5) The officers appointed under paragraph (1)(b) and subsection (3) shall be subject to the control, direction and supervision of the Director General.”.

**Amendment of section 6**

6. Section 6 of the principal Act is amended—

- (a) in subsection (3), by substituting for the words “An officer appointed under subsection 5(2) and a” the word “A”; and
- (b) in subsection (4)—
  - (i) by substituting for the words “The Director General and all officers appointed under subsection 5(2), and a” the word “A”;
  - (ii) by deleting the comma appearing after the words “subsection (1)”,; and
  - (iii) in the English language text, by substituting for the words “public servants” the words “a public servant”.

**Amendment of section 7**

7. Subsection 7(1) of the principal Act is amended by substituting for the words “this Act” the words “paragraph 5(1)(b) and subsection 5(3)”.

**New sections 7A, 7B, 7C and 7D**

8. The principal Act is amended by inserting after section 7 the following sections:

**“Appointment of licensed person, etc.**

**7A.** (1) Notwithstanding any other provisions of this Act, the Minister shall have the power to grant a licence on such conditions as he may think fit to any person to carry out inspection of any plant prescribed by the Minister and issue a certificate of fitness in respect of the plant inspected.

(2) The Minister may, for the purposes of subsection (1) and without prejudice to the generality of subsection (1), make an order published in the *Gazette* for the following purposes:

- (a) to prescribe the qualification and standards of competency of persons to be employed by a licensed person;

- (b) to prescribe the powers of a person employed by a licensed person to carry out the functions of a licensed person;
- (c) to prescribe the records to be kept by a licensed person;
- (d) to prescribe the returns to be submitted by a licensed person to the Director General at certain intervals;
- (e) to regulate the inspection by the Director General of the premises of a licensed person and the records kept thereat;
- (f) to prescribe inspection standards for a licensed person to comply with; and
- (g) to prescribe the functions or duties to be carried out by a licensed person.

(3) The Minister may, by order published in the *Gazette*, authorize a licensed person to demand, prescribe, collect and retain charges, fees or levy in respect of the services provided by the licensed person.

(4) An order made under subsection (3) shall specify—

- (a) the type of services in respect of which charges, fees or levy may be demanded, collected and retained; and
- (b) the duration of the authorization to demand, collect and retain the charges, fees or levy.

(5) A licensed person authorized under subsection (3) shall—

- (a) maintain such account, books and records in respect of the payment and collection of charges, fees or levy as the Director General may require;
- (b) furnish to the Director General such information, returns and accounts in respect of the payment and collection of charges, fees or levy as the Director General may require; and

- (c) permit the Director General or any other person authorized in writing by the Director General to have access to or examine or inspect any document, machinery or equipment maintained or used for the payment and collection of charges, fees or levy.

(6) The authorization of a licensed person under subsection (3) shall not render the Federal Government liable to any person in respect of any injury, damage or loss occasioned by the failure of the licensed person to carry out his obligations under this Act in respect of which charges, fees or levy are demanded, collected and retained.

(7) If a licensed person contravenes any condition of the licence or any of the provisions of any order made under this section or any of the provisions of subsection (5) with which he is required to comply, the licensed person shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding one year or to both.

(8) Notwithstanding the licensing of a person under this section, the Minister may give directions to the Director General to exercise any of the functions which under the terms of the licence are to be carried out by such person.

### **Revocation of licence**

**7B.** (1) If the Director General is satisfied that a licensed person has breached any condition of the licence, the Director General may give a notice in writing to the licensed person requiring him to comply with the condition which he has breached and take all measures stipulated in the notice within the period stated in the notice.

(2) If by the time the period stipulated in the notice expires the licensed person has failed to comply with the notice, the Director General shall present a report to the Minister on such failure.

(3) If, after considering the report from the Director General, the Minister is satisfied that the breach is serious in nature or affects or may affect the safety and health of employees or members of the public and that the licensed person has failed or refused to take or has not taken all measures stipulated in the notice for the purpose of ensuring compliance with the condition which the licensed person has breached, the Minister may give the licensed person a notice stating that he proposes to revoke the licence granted to such person and the notice shall also state—

- (a) the breach alleged against the licensed person and the actions or omissions that constitute the breach; and
- (b) the period (which shall not be less than thirty days from the date of the notice) within which the licensed person may make representations pertaining to the revocation.

(4) After the expiry of the period stated in the notice and after considering any representations made by the licensed person, the Minister may decide whether to continue with the proposed revocation or take no further action.

(5) Where the Minister decides to revoke the licence or take no further action, the Minister shall give a notice to the licensed person to inform him of the decision, and the decision shall come into force on the date the notice is delivered to the licensed person.

(6) A licensed person shall surrender the revoked licence to the Director General within seven days from the date of receipt of the notice under subsection (5).

(7) Notwithstanding the revocation of the licence, the validity of any certificate of fitness issued by the licensed person shall continue to be valid until the expiry date of the certificate of fitness and the licensed person shall continue to assume any obligation, duty and responsibility imposed by or in connection with the issuance of the certificate of fitness.

**Granting of new licence upon revocation**

7c. (1) Upon the revocation of a licence under section 7B, the Minister may, after consulting the Director General, appoint another person to carry out, discharge, assume or perform any of the functions, obligations, duties, responsibilities and conditions conferred or imposed by the revoked licence, and to receive any payments, benefits or privileges which the person whose licence is revoked is entitled to receive or enjoy under the terms and conditions of the licence.

(2) The person whose licence is revoked shall render all necessary assistance and cooperation to the person appointed by the Minister under subsection (1).

**Representing as licensed person**

7d. (1) A person shall not represent himself as a licensed person if he was never granted a licence under section 7A or the licence granted to him has been revoked under section 7B.

(2) A person who contravenes subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding two hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both.”.

**Substitution of section 9**

9. The principal Act is amended by substituting for section 9 the following section:

**“Membership of the Council**

9. (1) The Council shall consist of not less than twenty-two and not more than twenty-five members who shall be appointed by the Minister as follows:

- (a) five persons from organizations representing employers who, in the opinion of the Minister, have wide experience or special knowledge in matters relating to occupational safety and health;

- (b) five persons from organizations representing employees who, in the opinion of the Minister, have wide experience or special knowledge in matters relating to occupational safety and health;
- (c) the Secretary General of the Ministry of Human Resources;
- (d) the Director General of Occupational Safety and Health;
- (e) five representatives of the Government, consisting of—
  - (i) the Director General of Health Malaysia; and
  - (ii) representatives from the Ministry or Department whose responsibility is related to occupational safety and health, who, in the opinion of the Minister, have wide experience or special knowledge in matters relating to occupational safety and health;
- (f) the Executive Director of the National Institute of Occupational Safety and Health;
- (g) the Chief Executive Officer of the Social Security Organization; and
- (h) three or more persons, of whom at least one shall be a woman, from organizations or professional bodies the activities of whose members are related to occupational safety and health, and who, in the opinion of the Minister, have wide experience or special knowledge in matters relating to occupational safety and health.

(2) The Minister shall appoint the Chairman and the Deputy Chairman of the Council from among the persons mentioned in subsection (1), except the person mentioned in paragraph (1)(d).”.

**Amendment of section 11**

**10.** Section 11 of the principal Act is amended—

(a) in subsection (2)—

- (i) in paragraph (i), by substituting for the full stop at the end of the paragraph a semicolon; and
- (ii) by inserting after paragraph (i) the following paragraphs:
  - “(j) the procedures, arrangements, training, education or appropriate measures to be taken to enhance community awareness on occupational safety, health and welfare;
  - (k) the area of occupational safety and health research to be developed by relevant institutions and the publication of the results of such research;
  - (l) the development and establishment of a mechanism to generate, process, store and disseminate information on occupational safety, health and welfare.”; and

(b) by inserting after subsection (2) the following subsection:

“(3) The Council shall coordinate all matters and activities relating to occupational safety and health which are implemented or carried out by the Government.”.

**Amendment of section 12**

**11.** The principal Act is amended by substituting for subsection (1) the following subsection:

“(1) The Director General, who is a member of the Council under paragraph 9(1)(d), shall be the secretary to the Council.”.

**Amendment of section 14**

12. Section 14 of the principal Act is amended—

- (a) by substituting for the words “as soon as practicable, after the 30th June but before the 31st December of each year” the words “after the 31st December but before the 31st March of the following year”; and
- (d) by substituting for the words “30th June” the words “31st December”.

**Amendment of heading of Part IV**

13. The principal Act is amended by substituting for the heading of Part IV the following heading:

“GENERAL DUTIES OF EMPLOYERS, SELF-EMPLOYED  
PERSONS AND PRINCIPAL”.

**Amendment of section 15**

14. Section 15 of the principal Act is amended—

- (a) in the shoulder note, by deleting the words “**and self-employed persons to their employees**”;
- (b) in subsection (1), by deleting the words “and every self-employed person”;
- (c) in subsection (2)—
  - (i) in paragraph (d), by deleting the words “or self-employed person”;
  - (ii) in paragraph (e), by substituting for the full stop at the end of the paragraph a semicolon; and

(iii) by inserting after paragraph (e) the following paragraph:

“(f) the development and implementation of procedures for dealing with emergencies that may arise while his employees are at work.”; and

(d) by deleting subsection (3).

### **Amendment of section 16**

15. Section 16 of the principal Act is amended—

(a) by substituting for the shoulder note the following shoulder note:

**“Duty of employer to formulate occupational safety and health policy”**; and

(b) by deleting the words “and every self-employed person”.

### **New sections 18A and 18B**

16. The principal Act is amended by inserting after section 18 the following sections:

#### **“Duties of principal**

**18A.** (1) It shall be the duty of every principal to take, so far as is practicable, such measures as are necessary to ensure the safety and health of—

(a) any contractor engaged by the principal when at work;

(b) any subcontractor or indirect subcontractor when at work; and

(c) any employee employed by such contractor or subcontractor when at work.

(2) The duty imposed on the principal in subsection (1) shall only apply where the contractor, subcontractor or employee referred to in that subsection is working under the direction of the principal as to the manner in which the work is carried out.

(3) For the purposes of subsection (1), the measures necessary to ensure the safety and health of the persons at work include—

- (a) the provision and maintenance of plant and systems of work that are, so far as is practicable, safe and without risk to health;
- (b) the making of arrangements including the allocation of sufficient time, budget and other resources for ensuring, so far as is practicable, safety and absence of risks to health in connection with construction work activities, use or operation, handling, storage or transport of plant and substances;
- (c) the provision of such information, instruction, training and supervision as is necessary to ensure, so far as is practicable, the safety and health of the persons at work;
- (d) so far as is practicable, as regards to any place of work under the control of the principal, the maintenance of the place of work in a condition that is safe and without risks to health and the provision and maintenance of the means of access to and egress from it that are safe and without such risks;
- (e) the provision and maintenance of a working environment for the persons at work that is, so far as is practicable, safe and without risks to health; and
- (f) the development and implementation of procedures for dealing with emergencies that may arise while the persons are at work.

(4) It shall be the duty of every principal to take, so far as is practicable, necessary measures to ensure the safety and health of persons, other than a person referred to in paragraph (1)(a),(b) or (c) working under the principal's direction, who may be affected by any undertaking carried on by him at the place of work.

(5) It shall be the duty of every principal, in the prescribed circumstances and in the prescribed manner, to give to persons, other than a person referred to in paragraph (1)(a), (b) or (c) working under the principal's direction, the prescribed information on such aspects of the manner in which he conducts his undertaking as might affect their safety or health.

(6) For the purposes of this section, "subcontractor" means any person who contracts with a contractor for the execution by or under the subcontractor of the whole or any part of any work undertaken by the contractor for his principal, and includes any person who contracts with a subcontractor to carry out the whole or any part of any work undertaken by the subcontractor for a contractor.

### **Duty to conduct and implement risk assessment**

**18B.** (1) Every employer, self-employed person or principal shall conduct a risk assessment in relation to the safety and health risk posed to any person who may be affected by his undertaking at the place of work.

(2) Where a risk assessment indicates that risk control is required to eliminate or reduce the safety and health risk, the employer, self-employed person or principal shall implement such control.

(3) For the purposes of this section, "risk assessment" means the process of evaluating the risks to safety and health arising from hazards at work and determining the appropriate measures for risk control."

### **Amendment of section 19**

**17.** Section 19 of the principal Act is amended—

- (a) in the shoulder note, by substituting for the words "or 18" the words ", 18, 18A or 18B";
- (b) by substituting for the words "or 18" the words ", 18, 18A or 18B"; and
- (c) by substituting for the words "fifty thousand" the words "five hundred thousand".

**Amendment of section 20**

**18.** Subsection 20(1) of the principal Act is amended—

- (a) in paragraph (b), by deleting the word “and” at the end of the paragraph;
- (b) in paragraph (c), by substituting for the full stop at the end of the paragraph the words “; and”; and
- (c) by inserting after paragraph (c) the following paragraph:

“(d) to take such steps as are necessary to secure, so far as is practicable, that the persons supplied with the plant are provided with all such revisions of information provided to them under paragraph (c) as are necessary by reason of it becoming known that there is a new risk that could give rise to a serious risk to safety or health.”.

**Amendment of section 21**

**19.** Section 21 of the principal Act is amended—

- (a) in subsection (1)—
  - (i) in paragraph (b), by deleting the word “and” at the end of the paragraph;
  - (ii) in paragraph (c), by substituting for the full stop at the end of the paragraph the words “; and”; and
  - (iii) by inserting after paragraph (c) the following paragraph:

“(d) to take such steps as are necessary to secure, so far as is practicable, that the persons supplied with the substance are provided with all such revisions of information provided to them under paragraph (c) as are necessary by reason of it becoming known that there is a new risk that could give rise to a serious risk to safety or health.”; and

- (b) in subsection (2), by substituting for the words “manufacture or supply” the words “formulation or manufacture”.

### **Amendment of section 23**

20. Section 23 of the principal Act is amended by substituting for the words “twenty thousand” the words “two hundred thousand”.

### **Amendment of heading of Part VI**

21. The heading of Part VI of the principal Act is amended by inserting after the words “GENERAL DUTIES” the words “AND RIGHTS”.

### **Amendment of section 24**

22. Subsection 24(2) of the principal Act is amended by substituting for the words “one thousand” the words “two thousand”.

### **New section 26A**

23. The principal Act is amended by inserting after section 26 the following section:

#### **“Rights of employees**

26A. (1) An employee, after informing his employer or his representative that he has reasonable justification to believe there exist an imminent danger at his place of work, shall have the right to remove himself from the danger or the work if the employer fails to take any action to remove the danger.

(2) An employee who removes himself from the danger in accordance with subsection (1) shall be protected against undue consequences and shall not be discriminated against.

(3) For the purposes of this section, “imminent danger” means a serious risk of death or serious body injury to any person that is caused by any plant, substance, condition, activity, process, practice, procedure or place of work hazard.”.

**Amendment of section 27**

**24.** Section 27 of the principal Act is amended—

(a) in subsection (1)—

- (i) in paragraph (b), by deleting the word “or” at the end of the paragraph;
- (ii) in paragraph (c), by substituting for the full stop at the end of the paragraph the words “; or”; and
- (iii) by inserting after paragraph (c) the following paragraph:

“(d) has assisted an officer or assessor in any inquiry in the conduct of any inspection or investigation under this Act.”; and

(b) in subsection (3), by substituting for the words “ten thousand” the words “one hundred thousand”.

**New Part VIA**

**25.** The principal Act is amended by inserting after Part VI the following part:

“PART VIA

NOTIFICATION OF OCCUPATION OF PLACE OF WORK,  
INSTALLATION AND INSPECTION OF PLANT, ETC.

**Notice of occupation of place of work**

**27A.** (1) Subject to subsection (2), any person who occupies or uses any premises as a place of work or undertakes any activity in a place of work shall give notice to an officer containing such particulars, and in such manner and within such time, as the Director General may determine.

(2) The requirement of giving notice under subsection (1) shall apply only to places of work and activities as may be prescribed by the Minister.

(3) Any person who contravenes subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding one year or to both.

### **Prescription of plant requiring certificate of fitness**

**27B.** The Minister may prescribe any plant for which a certificate of fitness is required.

### **Installation of plant**

**27C.** (1) No person shall install or cause to be installed any prescribed plant under section 27B unless the person ensures that the plant has fulfilled all the requirements prescribed by the Minister and has obtained the written approval from the Director General.

(2) A person may apply for the approval referred to in subsection (1) by submitting to the Director General such particulars in such manner and within such time as the Director General may determine.

(3) Upon receiving and considering an application under subsection (2), the Director General may grant an approval subject to such terms and conditions as the Director General may impose.

(4) Any person who contravenes subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding one year or to both.

### **Certificate of fitness**

**27D.** (1) No person shall operate or cause or permit to be operated any plant that has been installed under section 27C unless the plant has a certificate of fitness issued by an officer or a licensed person.

(2) When a prescribed plant has been installed under section 27c, the person shall serve a written notice on an officer or a licensed person who, after receiving such notice, shall make an inspection of the plant.

(3) If, upon inspection, the officer or the licensed person finds that the plant—

(a) complies with all the requirements prescribed by the Minister in respect of the plant, the officer or the licensed person shall issue a certificate of fitness upon the payment of such fees by the person as the Minister may prescribe; or

(b) does not comply with any of the requirements prescribed by the Minister in respect of the plant, the person shall pay to the officer or the licensed person such fees as may be prescribed by the Minister for the services rendered despite the non-issuance of a certificate of fitness.

(4) A certificate of fitness issued under subsection (3) shall be in such form and subject to such terms and conditions, and shall be valid for such period, as the Minister may prescribe.

(5) Any person who contravenes subsection (1) shall be guilty an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding one year or to both.

(6) In the case of any contravention of subsection (1), an officer shall immediately serve to the person who operates or causes or permits to be operated the plant a written notice prohibiting the operation of the plant or may render the plant inoperative until a certificate of fitness is issued.

(7) Any person who fails to comply with the notice issued under subsection (6) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both.

(8) A certificate of fitness in respect of any plant which is being dismantled or repaired or is damaged for any reason shall terminate upon such dismantlement, repair or damage, but the Director General may exempt any plant from the application of this subsection if in his opinion the plant will not cause any danger to any person or property.

(9) For the purposes of subsection (8)—

- (a) “damage” means any physical defect caused to any plant during operation or otherwise which may affect the strength and integrity of the plant during subsequent operation;
- (b) “dismantle” means to undo any part of any plant which may affect the strength, integrity or functional capability of the plant;
- (c) “repair” means any work done to make good any part of any plant which has been damaged.

### **Periodical inspection of plant**

**27E.** (1) A plant prescribed under section 27B shall be inspected by an officer or a licensed person at such periods and in such manner as the Minister may prescribe.

(2) An inspection under subsection (1) shall be subject to the payment of such fees as the Minister may prescribe.

### **Special scheme of inspection**

**27F.** (1) Notwithstanding section 27E, an occupier may apply to the Director General for an approval for a special scheme of inspection pertaining to inspections for certain classes of plant and its auxiliary together with such fees as the Minister may prescribe.

(2) The Director General may approve an application under subsection (1) if he is satisfied that the requirements prescribed by the Minister in respect of the plant have been fulfilled.

(3) When the approval under subsection (2) is granted, the inspection of the plant shall be conducted according to the special scheme of inspection.

**Director General may make orders in certain circumstances**

**27G.** (1) The Director General may make special orders for the conduct and guidance of persons employed in any service involving the management or operation of, or attendance on, or proximity to, any plant or process carried on in any place of work as appear to him necessary to ensure their safety and health.

(2) The employer shall ensure by all reasonable means that the persons exposed to danger are aware of any such special orders made under subsection (1) and those persons shall observe the special orders.

(3) For the purposes of subsection (2), a copy of the Director General's special orders printed or written in the appropriate languages and posted in conspicuous places in the vicinity of the plant or process to which the special orders refer, so that all persons referred to shall have free access and opportunity to read the same, shall be deemed to constitute reasonable means.”.

**Amendment of section 28**

**26.** Section 28 of the principal Act is amended—

(a) by substituting for the shoulder note the following shoulder note:

**“Occupational health service”;**

(b) in subsection (1)—

(i) by substituting for the word “industries” the words “places of work” wherever appearing;

(ii) in paragraph (b)—

(A) by substituting for the word “injury” the words “adverse effects”; and

- (B) by inserting the word “or” at the end of the paragraph;
  - (iii) by deleting paragraph (c);
  - (iv) in paragraph (d), by substituting for the word “injury” the words “adverse effects”; and
  - (v) by substituting for the words “reasonable arrangements as may be specified in the regulations to be made for the medical surveillance and medical examination, not including medical treatment of a preventive character, of the persons or any class of persons employed in the industries or class or description of industries” the words “arrangements for the occupational health service.”; and
- (c) by deleting subsections (2) and (3).

#### **New section 28A**

27. The principal Act is amended by inserting after section 28 the following section:

**“No action against person carrying out occupational health service**

**28A.** No employer shall take any action against any person who carries out an occupational health service for—

- (a) making a complaint about any matter which is considered as a risk to health; or
- (b) making a report to the Director General regarding any patient whom he believes to be suffering from any occupational disease or occupational poisoning.”.

#### **Amendment of section 29**

28. Section 29 of the principal Act is amended—

- (a) in subsection (1), by substituting for the word “industries” the words “places of work”;

- (b) in subsection (2), by substituting for the words “employ a competent person” the words “appoint a person who is competent”;
- (c) in subsection (3), by substituting for the word “employed” the word “appointed”;
- (d) by substituting for subsection (4) the following subsection:

“(4) A person shall be appointed as a safety and health officer only for one place of work at any one time, unless permitted otherwise by the Director General.”; and
- (e) in subsection (5), by substituting for the words “five thousand” the words “fifty thousand”.

#### **New section 29A**

**29.** The principal Act is amended by inserting after section 29 the following section:

#### **“Occupational safety and health coordinator**

**29A.** (1) An employer whose place of work is not included in any class or description of place of work as published in the *Gazette* under subsection 29(1) shall appoint one of his employees to act as an occupational safety and health coordinator if he employs five or more employees at his place of work.

(2) An employee appointed as an occupational safety and health coordinator under subsection (1) shall be appointed for the purpose of coordinating occupational safety and health issues at the place of work.

(3) Notwithstanding subsection (1), an employer referred to in subsection (1) who has appointed a safety and health officer at the place of work shall be deemed to have complied with subsection (1).

(4) An employer who contravenes subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding six months or to both.”.

**Amendment of section 30**

**30.** Subsection 30(4) of the principal Act is amended—

- (a) by substituting for the words “five thousand” the words “one hundred thousand”; and
- (b) by substituting for the words “six months” the words “one year”.

**New section 31A**

**31.** The principal Act is amended by inserting after section 31 the following section:

**“Occupational safety and health training course**

**31A.** (1) The Minister may, by order published in the *Gazette*, require any class or description of persons to attend an occupational safety and health training course as specified in the order that is conducted by a registered training provider.

(2) The employer of any person required to attend any training course under subsection (1) shall ensure that the person has completed such training course before allowing that person to perform any work for which the training is required.

(3) Notwithstanding that a person has completed such safety and health training course as is required under this section, the Director General may, if he thinks that a refresher course is necessary, issue a written direction requiring that person to attend another such training course.

(4) An employer who contravenes subsection (2) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding six months or to both.”.

**New Part VIIA**

**32.** The principal Act is amended by inserting after Part VII the following part:

“PART VIIA

COMPETENT PERSON AND REGISTERED TRAINING PROVIDER

**Activities to be carried out by competent person and registered training provider**

**31B.** (1) For the purposes of this Act, no person shall—

- (a) carry out any activity specified in the Fifth Schedule unless he has been registered as a competent person under this Act; or
- (b) conduct any occupational safety and health training course unless he has been registered as a registered training provider under this Act.

(2) A person who contravenes subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit.

**Application for registration**

**31c.** (1) A person who intends to be registered as a competent person or a registered training provider shall submit an application for registration to the Director General in such manner as the Director General may determine.

(2) An application under subsection (1) shall be subject to the payment of such fees as prescribed by the Minister and shall be accompanied by such documents and information as may be required by the Director General.

(3) The Director General may, after considering the application, approve the application subject to such conditions as he thinks fit, or refuse the application.

(4) An application under subsection (1) may be withdrawn at any time before the application is approved or refused, in which event the fees paid shall not be refunded.

**Validity of registration**

**31D.** Every registration approved under section 31C shall be valid for a period of three years from the date specified in the approval.

**Renewal of registration**

**31E.** (1) A competent person or a registered training provider may make an application for the renewal of registration before the date of expiry of the registration at such time and in such manner as determined by the Director General.

(2) The application under subsection (1) shall be subject to the payment of such fees as prescribed by the Minister and shall be accompanied by such documents as may be required by the Director General.

(3) The Director General may, after considering the application under subsection (1)—

(a) renew the registration, with or without conditions;  
or

(b) refuse to renew the registration.

(4) The Director General may refuse to renew a registration if the Director General is satisfied that—

(a) the applicant has failed to comply with any of the provisions of this Act or any subsidiary legislation made under this Act;

(b) the applicant has failed to comply with any of the conditions of the registration; or

(c) the applicant has submitted any statement, information or document found to be false, irrespective of whether the applicant knows or believes such statement, information or document is false or otherwise.

(5) An application under subsection (1) may be withdrawn at any time before the application is approved or refused, in which event the fees paid shall not be refunded.

### **Cancellation of registration**

**31F.** (1) The Director General may cancel the registration of a competent person or a registered training provider if the Director General is satisfied that he—

- (a) has failed to comply with any of the provisions of this Act or any subsidiary legislation made under this Act;
- (b) has failed to comply with any of the conditions imposed on the registration;
- (c) has obtained or procured his registration by fraud or misrepresentation; or
- (d) is no longer fit to act as a competent person or a registered training provider.

(2) Notwithstanding subsection (1), the Director General shall not cancel the registration of a competent person or a registered training provider unless the Director General is satisfied that, after giving the competent person or the registered training provider an opportunity of making any representation in writing he may wish to make, the registration should be cancelled.

(3) Where the registration of a competent person or a registered training provider is cancelled, the Director General shall issue a notice of cancellation of registration to the competent person or the registered training provider, and such cancellation shall take effect on the date specified in the notice.”.

### **Amendment of section 32**

**33.** Subsection 32(2) of the principal Act is amended—

- (a) by substituting for the words “the diseases listed in the Third Schedule of the Factories and Machinery Act 1967 [Act 139], or any disease named” the words “the occupational diseases or occupational poisoning specified”; and
- (b) by deleting the words “, or occupational poisoning”.

**Amendment of section 33**

**34.** Section 33 of the principal Act is amended by inserting after subsection (2) the following subsection:

“(2A) The assessors appointed under subsection (2) shall have, for the purposes of the inquiry, the power to enter and inspect any premises, the entry or inspection of which is requisite for the purposes of the inquiry.”.

**New section 34A**

**35.** The principal Act is amended by inserting after section 34 the following section:

**“Duties of the owner, occupier, etc., in inquiry**

**34A.** The owner or occupier of, or any employer in, any place of work and any employee of the owner, occupier or employer, shall provide such assistance needed for the purposes of any inquiry under this Act.”.

**Amendment of section 35**

**36.** Section 35 of the principal Act is amended by inserting after subsection (2) the following subsection:

“(3) A person who fails to comply with the order under subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both.”.

**Deletion of section 36**

**37.** The principal Act is amended by deleting section 36.

**Amendment of section 39**

**38.** Subsection 39(2) of the principal Act is amended—

- (a) in paragraph (a), by substituting for the word “examination” the words “an inspection, examination”;
- (b) in paragraph (b), by substituting for the word “examination” the words “inspection, examination”;
- (c) in paragraph (c), by substituting for the word “examination” the words “inspection, examination”;
- (d) in paragraph (e)—
  - (i) by substituting for the words “any of the diseases named in the Third Schedule of the Factories and Machinery Act 1967 or any disease named” the words “any occupational disease or occupational poisoning specified”; and
  - (ii) by substituting for the full stop at the end of the paragraph a semicolon; and
- (e) by inserting after paragraph (e) the following paragraphs:
  - “(f) require the production of any book, record, certificate, notice, computerized data or document, or any certified copy thereof, and make a copy thereof as he considers necessary for the purpose of any inspection, examination or investigation;
  - (g) assess the levels of noise, illumination, heat or harmful or hazardous substances in any place of work and the exposure levels of persons at work therein;
  - (h) require any hospital, medical clinic or mortuary to provide any information (including the medical reports) of any person who is or had been working in a place of work who is injured in an accident in a place of work or who is suspected of suffering from an occupational disease contracted from a place of work and is receiving treatment at the hospital or medical clinic.”.

**Amendment of section 47**

**39.** Section 47 of the principal Act is amended—

- (a) in the shoulder note, by inserting after the word “**inspection**” the words “, **examination or investigation**”;
- (b) in paragraph (e), by deleting the word “or” at the end of the paragraph; and
- (c) by inserting after paragraph (e) the following paragraph:
  - “(ea) fails to comply with any direction given by an officer as is reasonably necessary for the purpose of any inspection, examination or investigation; or”.

**Amendment of section 48**

**40.** Subsection 48(1) of the principal Act is amended by substituting for the words “, and in every such case the place of work, plant, substance or process shall not be used or operated even after the period of expiry of the notice until the danger has been removed or the defect made good to the satisfaction of the officer” the words “or such extended period as he may allow”.

**Amendment of section 49**

**41.** Subsection 49(2) of the principal Act is amended—

- (a) by substituting for the words “fifty thousand” the words “five hundred thousand”;
- (b) by substituting for the words “five years” the words “two years”; and
- (c) by substituting for the words “five hundred” the words “two thousand”.

**Amendment of section 51**

**42.** Section 51 of the principal Act is amended—

- (a) by substituting for the word “regulation” the words “subsidiary legislation”;

- (b) by substituting for the words “ten thousand” the words “one hundred thousand”; and
- (c) by substituting for the words “one thousand” the words “two thousand”.

## **Substitution of section 52**

**43.** The principal Act is amended by substituting for section 52 the following section:

### **“Liability of director, etc., of company, etc.**

**52.** Where any person commits an offence under this Act or any subsidiary legislation made under this Act is a company, limited liability partnership, firm, society or other body of persons, a person who at the time of the commission of the offence was a director, compliance officer, partner, manager, secretary or other similar officer of the company, limited liability partnership, firm, society or other body of persons or was purporting to act in the capacity or was in any manner or to any extent responsible for the management of any of the affairs of the company, limited liability partnership, firm, society or other body of persons or was assisting in its management—

- (a) may be charged severally or jointly in the same proceedings with the company, limited liability partnership, firm, society or the body of persons; and
- (b) if the company, limited liability partnership, firm, society or other body of persons is found guilty of the offence, shall be deemed to be guilty of that offence and shall be liable to the same punishment or penalty as an individual unless, having regard to the nature of his functions in that capacity and to all circumstances, he proves—
  - (i) that the offence was committed without his knowledge; and

- (ii) that the offence was committed without his consent or connivance and that he had taken all reasonable precautions and exercised due diligence to prevent the commission of the offence.”.

**New section 52A**

**44.** The principal Act is amended by inserting after section 52 the following section:

**“Liability of person for act, etc., of employee, etc.**

**52A.** Where any person would be liable to any punishment or penalty under this Act for any act, omission, neglect or default committed—

- (a) by that person’s employee in the course of his employment;
- (b) by that person’s agent when acting on behalf of that person; or
- (c) by the employee of that person’s agent when acting in the course of his employment by the person’s agent or otherwise on behalf of the person’s agent acting on behalf of that person,

that person shall be liable to the same punishment or penalty for every such act, omission, neglect or default of the person’s employee or agent, or of the employee of the person’s agent.”.

**Deletion of section 55**

**45.** The principal Act is amended by deleting section 55.

**New section 60A**

**46.** The principal Act is amended by inserting after section 60 the following section:

**“Evidence**

**60A.** In any proceedings under this Act or its subsidiary legislation, all reports, records or register and any extracts therefrom kept and certified by an officer shall be *prima facie* evidence of the facts stated therein.”.

**Amendment of section 63**

**47.** Subsection 63(1) of the principal Act is amended by deleting the words “36 or”.

**Amendment of section 64**

**48.** Subsection 64(1) of the principal Act is amended by deleting the words “an order made by the Director General under section 35,”.

**Amendment of section 66**

**49.** Section 66 of the principal Act is amended—

(a) in subsection 2—

- (i) in paragraph (b), by inserting after the word “examination,” the word “requalification,”;
- (ii) by inserting after paragraph (b) the following paragraph:
  - “(ba) prescribe the requirements with respect to any plant for the purposes of the special scheme of inspection under section 27F”;
- (iii) in paragraph (d), by substituting for the words “or mark” the words “, mark or supply information on”;
- (iv) in paragraph (h), by inserting after the words “dangerous occurrence” the words “and to minimise the risk and to mitigate the effects thereto”;

- (v) in paragraph (*j*), by substituting for the words “protective clothing or equipment” the words “personal protective equipment and monitoring and testing facilities equipment;
  - (vi) in paragraph (*l*), by inserting before the word “health” the words “ergonomic, physiological and psychological needs and”;
  - (vii) in paragraph (*m*), by inserting after the word “welfare” the words “, safety and health”;
  - (viii) in paragraph (*p*), by deleting the words “36 or”;
  - (ix) in paragraph (*t*), by substituting for the word “employing” the words “appointing”; and
  - (x) by inserting after paragraph (*t*) the following paragraphs:
    - “(ta) prescribe the requirements and manner for the notification of undertaking, planning and designing management of any activity at a place of work;
    - (tb) prescribe the times at which and the manner in which a competent person is required to take charge or control of any plant, place of work, process, substance and activity, and any requirement relating to it;” and
- (b) by inserting after subsection (2) the following subsection:
- “(3) Regulations made under this Act may prescribe any act or omission in contravention of the regulations to be an offence and may prescribe penalties of a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both for such offence.”.

### **Substitution of section 67**

**50.** The principal Act is amended by substituting for section 67 the following section:

**“Confidentiality of information**

**67.** (1) Except for the purposes of this Act or for the purposes of any civil or criminal proceedings under this Act or any other written law, no person shall disclose any manufacturing or commercial secret which may at any time come to his knowledge or has been obtained by him in the course of his duties under this Act.

(2) For the purposes of this section, “manufacturing or commercial secret” means highly sensitive information relating to—

- (a) any manufacturing process;
- (b) any product, raw material or by-product formulation;
- (c) any idea of duplication or cloning of product; or
- (d) any technical information on operating system,

and that the information has been declared as manufacturing or commercial secret in writing by the occupier or owner.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall, on conviction be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both.”.

**New sections 67A and 67B**

**51.** The principal Act is amended by inserting after section 67 the following sections:

**“Power to exempt**

**67A.** (1) The Minister may, upon the recommendation of the Director General, by an order published in the *Gazette*, exempt any plant, substance, process, person or place of work, or class of persons or class of place of work, from any provision of this Act or its subsidiary legislation.

(2) An exemption under subsection (1) may be subject to such conditions as the Minister thinks fit.

(3) The Minister may, upon recommendation of the Director General, by order published in the *Gazette*, vary or revoke an exemption given under subsection (1).

### **Power to amend Schedules**

**67B.** Except for the First Schedule, the Minister may, by order published in the *Gazette*, amend the Schedules to this Act.”.

### **Substitution of First Schedule**

**52.** The principal Act is amended by substituting for the First Schedule the following schedule:

“FIRST SCHEDULE  
(Subsection 1(3))  
Non-application

1. Domestic employment in relation to a person who employs another, or is employed, as a domestic servant within the meaning of the Employment Act 1955 [*Act 265*]
2. Armed forces
3. Work on board ships governed by the Merchant Shipping Ordinance 1952 [*Ord. No. 70 of 1952*], the Sabah Merchant Shipping Ordinance 1960 [*Ord. No. 11 of 1960*] or the Sarawak Merchant Shipping Ordinance 1960 [*Ord. No. 2 of 1960*]

### **Amendment of Second Schedule**

**53.** The Second Schedule to the principal Act is amended—

(a) in subparagraph 4(4), by substituting for the word “six” the word “eleven”; and

(b) by inserting after paragraph 4 the following paragraph:

**“4A.** The Council may invite any person to attend any meeting of the Council for the purpose of advising the Council on any matter under discussion but that person shall not be entitled to vote at the meeting.”.

**New Fourth and Fifth Schedules**

**54.** The principal Act is amended by inserting after the Third Schedule the following schedules:

“FOURTH SCHEDULE

[Subsection 3(1)]

Serious body injury

1. Emasculation
2. Permanent privation of the sight of either eye
3. Permanent privation of the hearing of either ear
4. Privation of any member or joint
5. Destruction or permanent impairing of the powers of any member or joint
6. Permanent disfiguration of the head or face
7. Fracture or dislocation of a bone
8. Amputation of the arm, hand, finger, thumb, leg, foot or toe
9. Any crush injury to the head or torso causing damage to the brain or internal organs in the chest or abdomen
10. Any burn injury (including scalding/any injury to the scalp) which—
  - (a) covers more than 10% of the whole body’s total surface area; or
  - (b) causes significant damage to the eyes, respiratory system or other vital organs
11. Any degree of scalding which requires treatment by a registered medical practitioner
12. Any other injury arising from working in an enclosed space which leads to hypothermia or heat-induced illness
13. Loss of consciousness caused by head injury or asphyxia (lack of oxygen)
14. Electrical injury
15. Loss of consciousness or acute illness from absorption, inhalation or ingestion of any substance which requires treatment by a registered medical practitioner

16. Any case of acute ill health where there is reason to believe that this resulted from occupational exposure to isolated pathogen or infected material
17. Any other work related injury or burn injury which results in the person injured being admitted immediately into hospital for more than 24 hours

## FIFTH SCHEDULE

[Paragraph 31B(1)(a)]

## Activities

1. To fabricate, install, erect, dismantle, test, inspect, maintain, repair or service any plant or engineering control equipment
2. To operate, handle or be in charge of any plant
3. To carry out medical surveillance and health examination
4. To conduct health risk assessment for any chemical that is hazardous to health
5. To conduct indoor air quality assessment
6. To monitor or test work environment, plant or place of work including chemical exposure monitoring, noise monitoring and audio metric testing
7. To conduct any occupational safety and health training, assessment or examination”.

**Savings**

**55.** (1) All persons holding office under the principal Act immediately before the commencement of this Act as the Director General, the Deputy Director General, the Directors, the Deputy Directors, the Assistant Directors and other occupational safety and health officers shall, on the commencement of this Act, continue to hold office until the end of the term of their appointment.

(2) Notwithstanding section 9 of this Act, the members of the Council holding office under subsection 9(1) of the principal Act immediately before the commencement of this Act shall, on the commencement of this Act, continue to hold office until the end of the term of their appointment.

EXPLANATORY STATEMENT

This Bill seeks to amend the Occupational Safety and Health Act 1994 (“Act 514”).

2. *Clause 1* contains the short title and the provision on the commencement of the proposed Act.

3. *Clause 2* seeks to amend section 1 of Act 514.

*Subclause 2(a)* seeks to substitute subsection 1(2) of Act 514 to provide for the application of Act 514 to all places of work throughout Malaysia. Currently, the application of Act 514 is throughout Malaysia to the industries as specified in the First Schedule of Act 514. The proposed amendment is intended to extend the application of Act 514 to all places of work covering wider sectors and not limiting its application to only those places as specified in the First Schedule of Act 514.

*Subclause 2(b)* seeks to amend subsection 1(3) of Act 514 to exclude the work specified in the First Schedule from the application of Act 514.

4. *Clause 3* seeks to amend section 3 of Act 514 to introduce new definitions and to amend certain existing definitions.

5. *Clause 5* seeks to substitute section 5 of Act 514 with a new section 5. The proposed section 5 deals with appointment of officers for the purposes of Act 514.

The proposed subsection 5(1) seeks to empower the Minister to appoint officers necessary for the purposes of Act 514 who shall be public officers from the Factory and Machinery Inspector Scheme of Service.

The proposed subsection 5(2) seeks to provide that the Deputy Director General shall exercise the powers and perform the duties of the Director General if the Director General, for any reason, is unable to exercise or perform such powers or duties.

The proposed subsection 5(3) seeks to empower the Minister to appoint any public officer from any scheme of service other than specified in subsection 5(1) to be an officer for all or any of the purposes of Act 514.

The proposed subsection 5(4) seeks to provide that an officer appointed under paragraph 5(1)(b) and subsection 5(3) shall perform all the duties assigned, and may exercise all the powers conferred, upon the Director General under Act 514 and the proposed subsection 5(5) provides that the officers shall be subject to the control, direction and supervision of the Director General.

6. *Clause 8* seeks to introduce new provisions into Act 514 namely sections 7A, 7B, 7C and 7D.

The proposed section 7A deals with the power of the Minister to grant a licence to any person to carry out inspection of any plant prescribed by the Minister and issue certificate of fitness in respect of the plant inspected.

The proposed section 7B deals with the revocation of a licence in the event the licensed person has breached any condition of the licence. The proposed section 7C further provides that where a licence is revoked under the proposed section 7B, the Minister may, after consulting the Director General, appoint another person to carry out any of the functions, etc., conferred or imposed on the revoked licence.

The proposed section 7D seeks to prohibit a person who is not granted a licence or whose licence has been revoked to represent himself as a licensed person.

7. *Clause 9* seeks to substitute section 9 of Act 514 with a new section. The proposed section 9 deals with the membership for the National Council for Occupational Safety and Health. Currently, the Council consists of a minimum number of not less than twelve members and a maximum of fifteen members. Through this amendment, the members of the Council are increased to a minimum number of twenty-two members and a maximum of twenty-five members.

8. *Clause 10* seeks to amend section 11 of Act 514.

*Subclause 10(a)(ii)* seeks to amend subsection 11(2) of Act 514 to introduce new paragraphs (j), (k) and (l). The proposed paragraphs seek to provide for additional powers and functions of the Council.

*Subclause 10(b)* seeks to introduce a new subsection 11(3) to provide that the Council shall coordinate all matters and activities relating to occupational safety and health which are implemented or carried out by the Government.

9. *Clause 11* seeks to amend subsection 12(1) of Act 514 to provide that the Director General shall be the secretary to the National Council for occupational Safety and Health.

10. *Clause 12* seeks to amend section 14 of Act 514 to provide that the Council shall submit an annual report of its activities ending on 31 December of each year after 31 December but before 31 March of the following year.

11. *Clause 14* seeks to amend section 15 of Act 514. Generally, section 15 is amended to exclude a self-employed person from that section. This *clause* further introduces a new paragraph (2)(f) into section 15 of Act 514 to provide for an additional duty of an employer to develop and implement procedures for dealing with emergencies that may arise while his employees are at work.

12. *Clause 16* seeks to introduce new provisions into Act 514 namely sections 18A and 18B.

The proposed section 18A deals with the duties of a principal towards any contractor, subcontractor and employees employed by the contractor or subcontractor when at work. Taking into consideration that a principal may not be an employer, a specific provision on the duties of a principal is introduced into Act 514.

The proposed section 18B seeks to provide for the duty of every employer, self-employed person or principal to conduct a risk assessment in relation to the safety and health risk posed to any person who may be affected by his undertaking at the work of place. This section further provides that if the risk assessment indicates that risk control is required to eliminate or reduce the safety and health risk, the employer, self-employed person or principal shall implement such control.

13. *Clause 17* seeks to amend section 19 of Act 514.

*Subclause 17(a)* seeks to make it an offence for any person who contravenes the proposed new section 18 or 18A.

*Subclause 17(c)* seeks to amend the penalty under section 19 of Act 514 by increasing the fine imposed for offences under that section from fifty thousand ringgit to five hundred thousand ringgit.

14. *Clause 18* seeks to amend subsection 20(1) of Act 514 to introduce a new paragraph 20(1)(d) into Act 514. The proposed paragraph 20(1)(d) seeks to impose a new duty on a person who designs, manufactures, imports or supplies any plant to take such steps to secure that the persons supplied with the plant are provided with all revisions of information as are necessary by reason of it becoming known that there is a new risk that could give rise to a serious risk to safety or health.

15. *Clause 19* seeks to amend section 21 of Act 514. *Subclause 19(a)(iii)* seeks to introduce a new paragraph 21(1)(d) into Act 514 to impose a new duty on a person who formulates, manufactures, imports or supplies any substance to take such steps to secure that the persons supplied with the substance are provided with all revisions of information as are necessary by reason of it becoming known that there is a new risk that could give rise to a serious risk to safety or health.

16. *Clause 20* seeks to amend section 23 of Act 514 to increase the fine imposed for offences under that section from twenty thousand ringgit to two hundred thousand ringgit.

17. *Clause 22* seeks to amend section 24 of Act 514 to increase the fine imposed for offences under that section from one thousand ringgit to two thousand ringgit.

18. *Clause 23* seeks to introduce new section 26A into Act 514. The proposed section 26A provides for the rights of an employee to remove himself from any danger or work if, after informing his employer or the employer's representative that he has reasonable justification to believe there exist an imminent danger, the employer fails to take any action to remove the danger. An employee who exercises his right under the proposed section 26A shall be protected against undue consequences and shall not be discriminated against.

19. *Clause 24* seeks to amend section 27 of Act 514.

*Subclause 24(a)(iii)* seeks to amend subsection 27(1) of Act 514 to introduce a new paragraph 27(1)(d). The proposed paragraph 27(1)(d) provides that no employer shall dismiss an employee, injure him in his employment, or alter his position to his detriment by reason only that the employee has assisted an officer or assessor in any inquiry in the conduct of any inspection or investigation under Act 514.

*Subclause 24(b)* seeks to amend subsection 27(3) to increase the fine imposed for offences under that section from ten thousand ringgit to one hundred thousand ringgit.

20. *Clause 25* seeks to introduce new Part VIA into Act 514. The new Part contains eight new provisions namely sections 27A, 27B, 27C, 27D, 27E, 27F and 27G.

The proposed section 27A seeks to introduce the obligation of any person who occupies or uses any prescribed premises as a place of work or undertakes any prescribed activity in a place of work to give notice to an officer.

The proposed section 27B seeks to empower the Minister to prescribe any plant for which a certificate of fitness is required.

The proposed section 27C seeks to provide that a person shall not install or cause to be installed any plant prescribed under section 27B except with the written approval of the Director General.

The proposed section 27D seeks to provide that no person shall operate or cause or permit to be operated any prescribed plant that has been installed under section 27C unless he has obtained a certificate of fitness. A certificate of fitness shall be subject to such terms and conditions and shall be valid for a period as the Minister may prescribe.

The proposed section 27E seeks to provide for the inspection of a plant prescribed under section 27B at such periods and in such manner as may be prescribed by the Minister.

The proposed section 27F seeks to provide that an occupier may apply to the Director General for approval for a special scheme of inspection pertaining to inspections for certain classes of plant and its auxiliary. If the application is approved, the inspection of the plant shall be conducted according to the special scheme of inspection.

The proposed section 27G seeks to empower the Director General to make special orders for the conduct and guidance of persons employed in any service involving the management or operation of, or attendance on, or proximity to, any plant or process carried on in any place of work as appear to him necessary to ensure their safety and health. The employer shall ensure that the persons exposed to danger are aware of any such special orders and those persons shall observe the special orders.

21. *Clause 26* seeks to amend section 28 of Act 514. *Subclause 26(b)(v)* seeks to amend subsection 28(1) to provide that the Minister may make regulations requiring such arrangements for the occupational health service where it appears to the Minister that any of the situations specified in paragraphs (1)(a) to (d) of that section occurs in any of the places of work or class or description of places of work.

22. *Clause 27* seeks to introduce a new section 28A into Act 514. The proposed section 28A provides that no employer shall take any action against any person who carries out an occupational health service for making a complaint about any matter which is considered as a risk to health or for making a report to the Director General regarding any patient whom he believes to be suffering from any occupational disease or occupational poisoning.

23. *Clause 28* seeks to amend section 29 of Act 514.

*Subclause 28(d)* seeks to introduce a new subsection 29(4) into Act 514 to provide that a person shall be appointed as a safety and health officer only for one place of work at any one time, unless permitted otherwise by the Director General.

*Subclause 28(e)* seeks to amend the penalty under section 29 of Act 514 by increasing the fine imposed for offences under that section from five thousand ringgit to fifty thousand ringgit.

24. *Clause 29* seeks to introduce a new section 29A into Act 514. The proposed section 29A imposed a duty on the employer who employs five or more employees at his place of work and whose place of work is not included in any class or description as published in the *Gazette* under subsection 29(1) of Act 514 to appoint one of his employees to act as an occupational safety and health coordinator for the purpose of coordinating occupational safety and health issues at the place of work.

25. *Clause 30* seeks to amend section 30 of Act 514 to amend the penalty imposed for offences under that section, i.e, to increase the fine from five thousand ringgit to one hundred thousand ringgit, and to increase the imprisonment terms from six months to one year.

26. *Clause 31* seeks to introduce a new section 31A into Act 514 to provide that the Director General may issue a written direction requiring any class or description of persons to attend any occupational safety and health training course that is conducted by a registered training provider. The employer of the person who is required to attend a training course shall ensure that the person has completed such training course before allowing that person to perform any work for which the training is required. The Director General may, if he thinks that a refresher course is necessary, issue a written direction requiring a person who has completed an occupational safety and health training course to attend another such training course.

27. *Clause 32* seeks to introduce new Part VIIA into Act 514. The new Part contains five new provisions namely sections 31B, 31C, 31D, 31E and 31F.

The proposed section 31B seeks to provide that any activity specified in the Fifth Schedule shall be carried out only by a person who has been registered as a competent person, and any occupational safety and health training course shall be conducted only by a person who has been registered as a registered training provider.

The proposed section 31C provides for the procedures for application for registration of a competent person and a registered training provider. The proposed section also empowers the Director General to approve or refuse the application for registration.

The proposed new section 31D provides for the validity of registration.

The proposed new section 31E provides for the renewal of registration before the date of expiry of the registration at such time and in such manner as determined by the Director General.

The proposed new section 31F empowers the Director General to cancel the registration of a competent person or a registered training provider in certain circumstances, after giving the competent person or registered training provider an opportunity of making any representation in writing.

28. *Clause 33* seeks to amend section 32 of Act 514. This amendment is consequential to the repealing of the Factories and Machinery Act 1967 [Act 139].

29. *Clause 34* seeks to amend section 33 of Act 514 to introduce a new subsection 33(2A). The proposed subsection 33(2A) seeks to allow the assessors appointed by the Director General for the purposes of an inquiry under subsection 33(2) of Act 514 to enter and inspect any premises.

30. *Clause 35* seeks to introduce a new section 34A into Act 514 to provide for the duties of the owner or occupier of a place of work, or any employer in a place of work, and the employees of the owner, occupier or employer, to provide any assistance needed in any inquiry under Act 514.

31. *Clause 36* seeks to amend section 35 of Act 514 to introduce a new subsection 35(3). The proposed subsection 35(3) seeks to make it an offence for any person who contravenes any order made by the Director General under subsection 35(1) and the penalty for such offence is a fine not exceeding five hundred thousand ringgit or imprisonment for a term not exceeding two years or both.

32. *Clause 37* seeks to delete section 36 of Act 514. An appeal on an order made under section 35 of Act 514 is no longer allowed.

33. *Clause 38* seeks to amend section 39 of Act 514.

*Subclause 38(d)* seeks to amend paragraph 39(2)(e) of Act 514. This amendment is consequential to the repealing of the Factories and Machinery Act 1967.

*Subclause 38(e)* seeks to amend subsection 39(2) of Act 514 to introduce new paragraphs (f), (g) and (h). The proposed paragraphs (f), (g) and (h) provide for additional powers of an officer while making an examination, inspection and investigation under Act 514.

34. *Clause 39* seeks to amend section 47 of Act 514. *Subclause 39(c)* seeks to introduce a new paragraph 47(ea) to make it an offence for any person who fails to comply with any direction given by an officer for the purposes of any inspection, examination or investigation.

35. *Clause 40* seeks to amend subsection 48(1) of Act 514 to allow a person who has been issued an improvement notice and required to take measures to remove any danger or rectify any defect within such period as specified or extended period as the officer may allow.

36. *Clause 41* seeks to amend subsection 49(2) of Act 514 to increase the fine for offence under that section, i.e., failure to comply with any improvement notice or prohibition notice. However, the terms for imprisonment is reduced from five years to two years to make the offence under that section a non-seizable offence.

37. *Clause 42* seeks to amend section 51 of Act 514 to increase the fine for general penalty.

38. *Clause 43* seeks to amend section 52 of Act 514 to deal with liability of director, etc., of company, etc.

39. *Clause 44* seeks to introduce a new section 52A into Act 514. The proposed section 52A deals with the penalty for a person who would be liable to any punishment or penalty for any act, etc., committed by his employee or agent or the agent's employee.

40. *Clause 45* seeks to delete section 55 of Act 514 as the provision has been dealt with under the proposed new section 52 in *clause 43*.

41. *Clause 46* seeks to introduce a new section 60A into Act 514. The proposed section 60A provides that all reports, records or register and any extracts therefrom kept and certified by an officer shall be *prima facie* evidence of the facts stated therein in any proceedings under Act 514 or its subsidiary legislation.

42. *Clause 47* seeks to amend subsection 63(1) of Act 514. This amendment is consequential to the deletion of section 36 of Act 514 in *clause 37*.

43. *Clause 48* seeks to amend subsection 64(1) of Act 514. This amendment is consequential to the deletion of section 36 of Act 514 in *clause 37*.

44. *Clause 49* seeks to amend section 66 of Act 514 which deals with the power of the Minister to make regulations. *Subclause 49(b)* seeks to introduce a new subsection 66(3) to enable any regulations made under Act 514 to provide for offences and penalties of a fine not exceeding five hundred thousand ringggit or imprisonment for a term not exceeding two years or both.

45. *Clause 50* seeks to amend section 67 of Act 514 to deal with confidentiality of information.

46. *Clause 51* seeks to introduce new sections into Act 514 namely sections 67A and 67B.

The proposed section 67A empowers the Minister, upon the recommendation of the Director General, to exempt any plant, substance, process, person or place of work, or class of persons or class of place of work, from any provision of the Act or its subsidiary legislation.

The proposed section 67B seeks to empower the Minister to amend the Schedules to Act 514, except the First Schedule, by order published in the *Gazette*.

47. *Clause 52* seeks to substitute the First Schedule to Act 514 to provide for the non-application of Act 514 to the work specified in that Schedule.

48. *Clause 53* seeks to amend the Second Schedule to Act 514 to introduce a new paragraph 4A. The proposed paragraph 4A seeks to allow the Council to invite any person to attend any meeting of the Council for the purpose of advising the Council on any matter under discussion but that person shall not be entitled to vote at the meeting.

49. *Clause 54* seeks to introduce new Fourth and Fifth Schedules into Act 514. The proposed Fourth Schedule lists the type of serious body injury, and the Fifth Schedule deals with activities that shall be carried out only by competent persons.

50. *Clause 55* deals with savings.

51. Other amendments not specifically dealt with in this Explanatory Statement are minor or consequential in nature.

#### *FINANCIAL IMPLICATIONS*

This Bill will not involve the Government in any extra financial expenditure.

[PN(U2)3099]