

Occupational Health and Safety (Miscellaneous Amendments) Bill

No.

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LEGISLATIVE ASSEMBLY

Read 1° 15 September 1993

(Brought in by Mr Pescott and Mr Gude)

A BILL

to amend the **Occupational Health and Safety Act 1985** and for other purposes

Occupational Health and Safety (Miscellaneous Amendments) Bill 1993

The Parliament of Victoria enacts as follows:

1. Purpose

The purpose of this Act is—

- 5
- (a) to change the way designated work groups are formed and health and safety representatives are elected; and
 - (b) to make various other changes to the **Occupational Health and Safety Act 1985**.

Section headings appear in bold italics and are not part of the Act.
(See **Interpretation of Legislation Act 1984**.)

2. Commencement

- (1) This Act (other than sections 5 and 6) comes into operation on the day on which it receives the Royal Assent.
- (2) Sections 5 and 6 come into operation on a day to be proclaimed. 5
- (3) If a provision referred to in sub-section (2) does not come into operation before 30 June 1994, it comes into operation on that day.

3. Changes concerning the functions of the Department 10

- (1) In section 8 (1) of the **Occupational Health and Safety Act 1985**, after “The functions of the Department” insert “under this Act”.
- (2) For section 8 (4) of the **Occupational Health and Safety Act 1985** substitute— 15
 - “(4) Sub-section (2) does not apply to regulations or codes of practice which the Minister considers, in the public interest, should be made as soon as is practicable.”.

4. Revision of employees’ duties 20

For section 25 (1) of the **Occupational Health and Safety Act 1985** substitute—

- “(1) While at work, an employee must—
 - (a) take reasonable care for his or her own health and safety and for the health and safety of anyone else who may be affected by his or her acts or omissions at the workplace; and 25
 - (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.”. 30

5. Substitution of section 29

For section 29 of the **Occupational Health and Safety Act 1985** substitute—

“29. Designated work groups

- 5 (1) An employee may ask the employer to establish designated work groups of employees in respect of the workplace.
- 10 (2) The composition of the designated work groups is to be determined by negotiation between the employer and the employees.
- 15 (3) The employer must do everything that is reasonably possible to ensure that negotiations to determine the composition of the designated work groups start within 14 days after a request is made under sub-section (1).
- 20 (4) The employer may initiate negotiations for the establishment of designated work groups at a workplace.
- 25 (5) If agreement cannot be reached on the composition of the designated work groups, the employer or the employees may apply to the Minister to determine the composition of the groups.
- 30 (6) In determining the composition of designated work groups (or whether the composition should be varied), regard must be had to—
- 35 (a) the number of employees at the workplace; and
- (b) the nature of each type of work performed at the workplace; and
- (c) the number and grouping of employees who perform the same or similar types of work; and
- (d) the areas at the workplace where each type of work is performed; and

- (e) the nature of any hazards at the workplace; and
 - (f) any overtime or shift working arrangements at the workplace.
 - (7) All the employees at a workplace may be determined to be one designated work group. 5
 - (8) The composition of designated work groups may be varied at any time by negotiation between the employer and the employees. 10
 - (9) If agreement cannot be reached on any proposal to vary the composition of designated work groups, the employer or the employees may apply to the Minister to determine whether the proposal should be adopted. 15
 - (10) The employer must ensure—
 - (a) that a written list of the designated work groups at the workplace is prepared and kept up to date; and 20
 - (b) that a copy of the list is displayed in a prominent place at the workplace.
 - (11) A reference to an employee in this section includes a reference to any person authorised by the employee to act as his or her representative for the purposes of this section.”. 25
- 6. Changes to provision concerning election of health and safety representatives** 30
- (1) For sections 30 (1), (2), (3) and (4) of the **Occupational Health and Safety Act 1985** substitute—
 - “(1) The members of a designated work group may elect one of the members of the group to be the group’s health and safety representative. 35

(2) All employees in a designated work group are entitled to vote in an election.

(3) If the members of a designated work group cannot agree on how an election is to be conducted, any member of the group may ask the Minister to appoint an officer of the public service to conduct the election.

(4) The Minister may appoint an officer of the public service to conduct the election.”.

(2) In section 4 of the **Occupational Health and Safety Act 1985**, the definition of “**trade union**” is **repealed**.

7. Changes concerning health and safety representatives

In section 31 of the **Occupational Health and Safety Act 1985**—

(a) in sub-section (1) (a), for “inspect the whole or any part of the workplace—” **substitute**—
“inspect any part of the workplace at which a member of the representative's designated work group works—”;

(b) for sub-section (2) (c) **substitute**—

“(c) if practicable, consult the health and safety representative of a designated work group on all proposed changes to the workplace, the plant or substances used at the workplace or the conduct of work at the workplace that may affect the health or safety of any member of the designated work group;”.

8. Consultation must occur before provisional improvement notice is issued

After section 33 (1) of the **Occupational Health and Safety Act 1985** insert—

“(1A) Before issuing a provisional improvement notice, the health and safety representative must consult with the person to whom the notice is to be issued.”.

s. 9 *Occupational Health and Safety (Miscellaneous Amendments)*

9. *Change to discrimination against employees provision*

For sections 54 (1) (a) and (b) of the **Occupational Health and Safety Act 1985** substitute—

“(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; or” 5

10. *Widening of scope of codes of practice*

For section 55 (1) of the **Occupational Health and Safety Act 1985** substitute—

“(1) For the purpose of providing practical guidance to employers, self-employed people, employees, occupiers, designers, manufacturers, importers, suppliers or any other person who may be placed under an obligation by or under this Act, the Minister may approve any code of practice.” 10
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11. *Repeal of requirement that the Minister consult the Department before making regulations*

Section 58 of the **Occupational Health and Safety Act 1985** is repealed.

